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**IN MEMORY OF**

**JUDGE DOUGLASS BOARDMAN**

FIRST DEAN OF THE SCHOOL

**By his Wife and Daughter**

**A. M. BOARDMAN and ELLEN D. WILLIAMS**

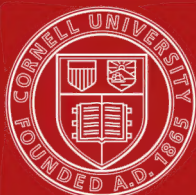
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A TREATISE  
ON  
THE LAW  
RELATING TO  
MUNICIPAL CORPORATIONS  
IN  
ENGLAND AND WALES.

BY  
THOMAS JAMES ARNOLD,  
OF LINCOLN'S INN, ESQ.,  
ONE OF THE MAGISTRATES FOR THE METROPOLITAN DISTRICT.

*SECOND EDITION.*

WITH  
CHAPTERS ON PRACTICE,  
BY  
SAMUEL GEORGE JOHNSTON,  
*Solicitor and Town Clerk of Nottingham.*

LONDON:  
SHAW & SONS, FETTER LANE & CRANE COURT,  
Law Printers and Publishers.

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1875.

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DEDICATION OF FIRST EDITION.

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TO

JOHN, LORD CAMPBELL,

LORD CHIEF JUSTICE OF ENGLAND,

&c., &c., &c.,

THIS TREATISE

IS (WITH HIS LORDSHIP'S PERMISSION)

DEDICATED

BY HIS GRATEFUL AND OBEDIENT SERVANT,

THE AUTHOR.

M9381.

## ADVERTISEMENT TO FIRST EDITION.

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THE object of this Treatise is to present, in a compendious form, the law with reference to Municipal Corporations, especially as it has been altered and re-modelled of late years by the Legislature.

It need hardly be observed, that it has no pretensions to supersede or in any way to interfere with the more elaborate works which have been published upon Corporate Bodies generally, and which the Student, who is desirous of mastering that branch of the law in all its bearings, will necessarily consult.

The intention of the writer has been to confine himself strictly to Municipal Corporations ; only referring to the general law on Corporations, in order to render intelligible the immediate subject of the Treatise.

In this view the first three Chapters, which treat briefly of Corporations generally, and of their incidents, may be considered as introductory, and the last two, which relate to proceedings by *Mandamus* and *Quo warranto*, as supplementary, to the main body of the work. For these Chapters deal with subjects, which are not confined to Municipal Corporations alone ; but without them the work would have been incomplete.

In a Treatise of this nature, the writer can lay no claims to originality; it is necessarily a compilation, which affords no scope even for the enunciation of general principles. He can but produce a methodical arrangement of materials which were already before him, or which the labours of others have rendered it a matter of no great research to obtain.

If the writer of this Treatise has succeeded in this he has done all he could aspire to, and may venture to hope that the result of his endeavours may prove of some utility to the profession, and to those concerned in the management of Corporate affairs.

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## PREFACE TO SECOND EDITION.

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As some time has elapsed since the 1st Edition of this Treatise was submitted to the profession, it might naturally be expected that several changes and improvements would, in the interval, have been made in a branch of the law of such general importance as that relating to Municipal Corporations.

The expectation of the reader will not be disappointed in this respect. A considerable number of statutes have been passed which directly and almost exclusively relate to Municipal Corporations, and which all operate more or less as amendments of, or as additions to, the principal Act (5 & 6 Will. 4, c. 76).

To incorporate the provisions of these statutes into the body of the original work, and to expunge such portions of the text as depended on enactments since repealed, has been a work of very considerable labour; in some instances requiring whole Chapters, or the greater part of them, to be entirely re-written. It is hoped the reader will find that this has been done carefully and satisfactorily.

The work was going through the press at the beginning of this year; but the publication was suspended, as it was generally anticipated that some extensive alterations in this branch of the law were about to be made in the then coming session of parliament. The only statute, however, that was passed relating to the subject was "The Municipal Elections Act, 1875" (38 & 39 Vict. c. 40), but the provisions of this statute, materially changing the method of nomination of candidates for municipal offices, whose election now takes place under the Ballot Act, 1872 (35 & 36 Vict. c. 33), are of sufficient conse-

quence to leave no cause for regret at this delay in the publication.

These last-mentioned Acts have entirely altered the mode of election of councillors, assessors, and auditors (they do not apply to the election of any other municipal officers), and their provisions have been incorporated in Chapter X., which treats of the election of councillors.

“The Prison Act, 1865” (28 & 29 Vict. c. 126), contains so many important enactments as to borough gaols, that it has been thought expedient to introduce a new Chapter (XXIV.) dealing expressly with this subject.

In like manner a new Chapter (XXVI.) has been written on the subject of Free Public Libraries and Museums, rendered necessary by “The Public Libraries Act, 1855” (18 & 19 Vict. c. 70).

The provisions of other statutes, and the cases that have been decided on matters connected with Municipal Corporations since the 1st Edition of this work, have been introduced in their proper places.

The Monthly Calendar of business to be done will be useful for purposes of reference.

Mr. Johnston, the Town Clerk of Nottingham, has written two additional Chapters on Practice, for which he alone is responsible; the former part of the work being entirely written by me.

T. J. ARNOLD.

*London, Oct., 1875.*

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CALENDAR  
OF  
BUSINESS TO BE DONE  
RELATING TO  
MUNICIPAL CORPORATIONS.

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JANUARY.

*First.*—WATCH COMMITTEE are to transmit to the Secretary of State a copy of all rules, orders, and regulations made by them or the council for the regulation and guidance of the *borough constables* or *policemen*. This is to be done quarterly, see *post*, Chap. XX. (5 & 6 Will. 4, c. 76, s. 86, App., p. xxxvi).

— COUNCIL are to appoint a certain number of their body to act as *trustees* for certain purposes where no day is named by Act of parliament, or instrument creating the trust, or has been usually observed for such appointment (5 & 6 Will 4, c. 76, s. 73, App., p. xxxi).

FEBRUARY.

*First.*—BOROUGH CORONERS are, on or before this day, to transmit to the Secretary of State a written return of all *inquests* held by them during the year ending the 31st December last (5 & 6 Will. 4, c. 76, s. 63, App., p. xxvii.)

*Twenty-second.*—TOWN CLERK is, on or before this day, to transmit a *register of parliamentary voters* for the borough for the current year to the Secretary of State (31 & 32 Vict., c. 58, s. 37).

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TOWN CLERK is, nine days at least before the 1st of March, to publish a *notice of the election of auditors and assessors* (38 & 39 Vict. c. 40, s. 1 (1), App., p. cxciii. Form of the notice, *Id.* Sched. 1, p. 1. See *post*, Chap. XIV).

MAYOR is, two days before the 1st of March, to give public notice of situation of *polling place* for election of auditors and assessors (5 & 6 Will. 4, c. 76, s. 23, App., p. xv).

COUNCIL are, during this month, *i.e.*, before the 1st of March, to transmit to the Secretary of State a statement of all *monies received and expended* on account of the corporation up to the last period of audit, *i.e.*, in the preceding September (5 & 6 Will. 4, c. 76, s. 93, App., p. xli; 6 & 7 Will. 4, c. 104, s. 10, App., p. lxiv.; 7 Will. 4 & 1 Vict. c. 78, s. 43, App., p. lxxxix).

## MARCH.

*First.*—BURGESSES are to *elect* two auditors and two assessors for the whole borough, by ballot. MAYOR is to preside at the election (5 & 6 Will. 4, c. 76, s. 37, App., p. xvii.: see *post*, Chap. XIV. *Ward assessors* are abolished (35 & 36 Vict. c. 33, s. 21, App., p. ccxv.) MAYOR is to publish *result of the election* as soon as possible (35 & 36 Vict. c. 33, s. 2, App., p. cxi., see *post*, Chap. X., p. 110; and Chap. XIV., p. 135).

— MAYOR is to appoint member of council as *co-auditor* (5 & 6 Will. 4, c. 76, s. 93, App., p. xli., *post*, Chap. XII).

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TREASURER is, during this month, to submit *accounts, &c.*, from the first day of last September to first day of current month, to the auditors and co-auditor (5 & 6 Will. 4, c. 76, s. 93, App., p. xli., *post*, Chap. XVIII).

## APRIL.

*First.*—WATCH COMMITTEE to make *quarterly return* (see 1st of January).

## JUNE.

*Tenth.*—TOWN CLERK is, on or before this day, to deliver to the overseers a sufficient number of *precepts* and of printed *forms of notices and lists* relating to parliamentary elections (see 6 & 7 Vict. c. 18, s. 10).

*Twentieth.*—OVERSEERS are, on or before this day, to publish a notice in writing as to the *payment of rates and taxes* before the 20th of July with reference to the insertion of the names of persons in the list of voters for members of parliament (see 6 & 7 Vict. c. 68, s. 4, and 11 & 12 Vict. c. 90). Also to give notice to any occupier whose *poor-rate* due on the 5th of January remains *unpaid* on the 1st of June (see 30 & 31 Vict. c. 102, s. 28).

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TOWN CLERK is, during this month, to make a return to the Secretary of State showing the sums levied or received as *rates for paving, &c.*, and the expenditure thereof (see 23 & 24 Vict. c. 51, ss. 1, 2).

## JULY.

*First.*—WATCH COMMITTEE to make *quarterly return* (see 1st of January).

*Thirty-first.*—OVERSEERS are, on or before this day, to make out and publish a *list of all persons entitled to vote* for members of parliament in respect of the occupation of premises of the yearly value of £10; and another list of all other persons (except freemen) so entitled to vote (see 6 & 7 Vict. c. 18, s. 13).

— TOWN CLERK is, on or before same day, to make out and publish a *list of freemen* entitled to vote as above (see 6 & 7 Vict. c. 18, s. 14).

## AUGUST.

*First.*—OVERSEERS are, on or before this day, to publish *lists of voters* (see 31st July), by affixing them to doors of churches and chapels.

— TOWN CLERK is, on or before same day, to publish *list of freemen voters* (see 31st of July) by fixing it to door of town hall or in some conspicuous place (see 6 & 7 Vict. c. 18, s. 14).

— *Twenty-fifth.*—PERSONS CLAIMING to be inserted in either of the last-mentioned lists are, on or before this day, to give *notice of their claims* to the overseers or town clerk respectively (see 6 & 7 Vict. c. 18, s. 15).

— LODGERS desirous of being registered as voters are, on or before this day, to deliver their *claims* to the overseers (see 30 & 31 Vict. c. 102, s. 30, sub-sect. 2).

— Persons on either list objecting to any other persons therein, are, on or before this day, to give *notice of their objections* to the overseers or town clerk respectively, and also to the person objected to (see 6 & 7 Vict. c. 18, s. 17).

*Twenty-ninth.*—OVERSEERS are, on or before this day, to deliver to the town clerk a copy of the *lists of voters* made out by them, of claimants, and of persons objected to (see 6 & 7 Vict. c. 18, s. 19).

## SEPTEMBER.

*First.*—OVERSEERS are, on or before this day, to make out the *burgess list* for the borough, and also the *list of occupiers resident within fifteen miles* of borough, and to deliver the same to the town clerk (5 & 6 Will. 4, c. 76, s. 15, *post*, App., p. x; 20 & 21 Vict. c. 50, s. 7, App., p. cl; 32 & 33 Vict. c. 55, s. 3. *Post*, Chap. VII).

On or before the same day they are to publish *lists of claimants* for insertion in lists of parliamentary voters, including *lodgers*, and of *persons objected to* (see 6 & 7 Vict. c. 18, s. 18; 30 & 31 Vict. c. 102, s. 30).

— TOWN CLERK is, on or before same day, to publish *list of claimants* for insertion in list of freemen and *list of persons objected to* (see 6 & 7 Vict. c. 18, s. 18).

*Fifteenth.*—TOWN CLERK is, on every day during the week preceding this day, to publish *lists delivered by overseers* (see the *first* of this month).

— Persons *claiming* to be inserted in such lists are, on or before the same day, to give notice to town clerk.

— Persons *objecting* to any other person therein are, on or before the same day, to give notice to the town clerk, and also to the persons objected to (5 & 6 Will. 4, c. 76, s. 17, App., p. x, *post*, Chap. VII).

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TREASURER is, during this month, to submit *accounts, &c.*, from the 1st day of last March to the auditors and co-auditor (5 & 6 Will. 4, c. 76, s. 93, App., p. xli, *post*, Chap. XVIII; and see Errata).

## OCTOBER.

*First.*—WATCH COMMITTEE to make *quarterly return* (see January 1st).

*Fifteenth.*—MAYOR AND ASSESSORS are, between the 1st of this month and this day, to hold court for *revising burgess lists*, three clear days' notice having been given thereof. They are also to revise the *separate list of residents within fifteen miles* (see *September 1st*); and when revised the mayor is to deliver them to the town clerk (5 & 6 Will. 4, c. 76, s. 18, App., p. xi.; 32 & 33 Vict. c. 55, s. 3 (2), App., p. ccviii). *Post*, Chaps. VIII, IX.

*Twenty-second.*—TOWN CLERK is, on or before this day, to make up the *burgess roll, i.e.*, an alphabetical list of the burgess

lists; and to copy the *separate list* above mentioned at the end of the burgess roll (5 & 6 Will. 4, c. 76, s. 22, App., p. xii.; 32 & 33 Vict. c. 55, s. 3, App., p. ccciii., *Post*, Chap. IX).

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*In this month*, two BOROUGH JUSTICES are to appoint *special constables* (5 & 6 Will. 4, c. 76, s. 83, App., p. xxxiv., *post*, Chap. XX).

WATCH COMMITTEE are to transmit to the Secretary of State a *statement of number of offences*, &c., up to the 29th of September preceding (see 19 & 20 Vict. c. 69, s. 14).

TOWN CLERK, at least nine days before 1st October, is to give notice of *election of councillors* (38 & 39 Vict. c. 40, s. 1 (1), App., p. ccxciii., *post*, Chap. X).

## NOVEMBER.

*First*.—BURGESSES are to *elect councillors* by ballot (5 & 6 Will. 4, c. 76, s. 30, App., p. xv., *post*, Chap. X).

*Ninth*.—COUNCIL at quarterly meeting are to *elect mayor*; such election being the first business to be transacted (5 & 6 Will. 4, c. 76, s. 69, App., p. xxi., *post*, Chap. XII).

— Also in boroughs, that are counties of themselves, to *elect sheriffs* immediately after the election of mayor (5 & 6 Will. 4, c. 76, s. 61, App., p. xxvi., *post*, Chap. XIII).

— To fix days on which other three *quarterly meetings* are to be held (5 & 6 Will. 4, c. 76, s. 69, App., p. xxix., *post*, Chap. XIII).

— In every third year to *elect aldermen* (5 & 6 Will. 4, c. 76, s. 25, App., p. xiii., *post*, Chap. XI).

## DECEMBER.

*Before the thirty-first*.—TOWN CLERK is to deliver the *lists of parliamentary voters* for the borough to the returning officer (see 6 & 7 Vict. c. 18, s. 48; and 30 & 31 Vict. c. 102, s. 38).



## NOTICE.

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Wherever in this work the *Court of Queen's Bench* is mentioned, it must now be taken to mean the *Queen's Bench Division of the High Court of Justice*, pursuant to Sect. 3 of the "Supreme Court of Judicature Act, 1873" (36 & 37 Vict. c. 66), suspended by the "Supreme Court of Judicature (Commencement) Act, 1874" (37 & 38 Vict. c. 83).

## ERRATA.

Page 78, n. (c), add " See also *R. v. Plenty*, Q. R. 4 Q. B. 346."

„ 91, par. 3 with notes should come in at p. 93, par. 7, after the words  
" by the Ballot Act."

„ 96, last line, dele " the " before " notice."

„ 96, n. (b) for " c. 42 " read " c. 40."

„ 115, n. (q) after " 1 Q. B. 878 " insert " 1 G. & D. 429."

„ 147, after par. 4. insert " He is to countersign orders of the Council  
on the Treasurer for the payment of money : 5 & 6 Will. 4, c. 76,  
s. 59; App., p. xxv., and see *post*, p. 151."

„ 151, par 5, for " on the 1st of March and the 1st of September " read  
" in the months of March and September."

„ 162, after par. 2 insert " the Clerk to the Justices may be paid by  
salary instead of fees by an order of the Secretary of State, on the  
recommendation of the Council, which is to be signed by the Mayor :  
14 & 15 Vict. c. 55, s. 9."

„ 171, n. (o), for " s. 18 " read " s. 9."

„ 171, par. 3, line 5, after " of the Council " insert " to be signed by the  
Mayor."

„ 186, n. (c) refer to 35 & 36 Vict. c. 91.

App. p. xcii., note (c), line 2, for " s. 38 " read " s. 3."

# A TREATISE ON THE LAW

RELATING TO

## MUNICIPAL CORPORATIONS.

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### CHAPTER I.

*Of Corporations generally and of the Characteristics and Objects of Municipal Corporations.*

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A corporation is a creation of the Law, and may be defined to be a body politic, capable of maintaining a perpetual succession, for the purpose of keeping alive certain rights and privileges.

Sir William Blackstone has remarked, that as all personal rights die with the person, and as the necessary forms of investing a series of individuals, one after another, with the same identical rights, would be very inconvenient, if not impracticable, it has been found necessary, when it is for the public advantage to have any particular rights kept on foot and continued, to constitute artificial persons who may maintain a perpetual succession, and enjoy a kind of legal immortality (a).

Thus, if it were considered advisable that a number of individuals should be associated together for any public purpose, it would be competent to them, generally speaking, to form a voluntary association to carry out that purpose; but such an association would possess no peculiar rights or privileges: they would not be empowered to make any regulations that would be legally binding upon the whole of the members, and in case of any property becoming vested in the association, with the

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(a) 1 Bl. Com. ch. 18.

view of carrying out its purposes, such property could only be continued to the successive members of the association, by a series of conveyances, repeated as often as the property changed hands.

But in the case of a corporation, the members and their successors are considered as one person in the eye of the law. Whatever rights or immunities are vested in the body at the time of its incorporation are transmitted to its successive members: they, or the majority of them, have power to make such regulations for the general conduct of the whole body, as may be considered most conducive to its welfare: these regulations, if not repugnant to the general law of the land, and if in accordance with the rules prescribed to the body at the time of its creation, will be binding upon all the members; and whatever property is vested in the body, remains vested in the successive members without any fresh conveyance, but by the mere operation of law.

Corporations, according to the law of England, are either aggregate or sole.

A corporation aggregate consists of several persons united together into one society, which is kept up by a perpetual succession of members, so as to continue for ever. Of this kind are the mayor, aldermen and burgesses of a borough; the head and fellows of a college; the dean and chapter of a cathedral church.

A corporation sole consists of one person only and his successors, in some particular station, who are incorporated by law in order to give them legal capacities and advantages which in their natural persons they could not have had, particularly that of perpetuity. In this sense the king or queen regnant is a sole corporation; so is a bishop, and so is every parson or vicar.

Corporations are, further, of two kinds; ecclesiastical and lay.

Ecclesiastical corporations consist entirely of spiritual persons, such as deans and chapters, or bishops, or vicars.

Lay corporations are of two sorts, eleemosynary and civil.

Eleemosynary corporations are such as are constituted for the perpetual distribution of the free alms or bounty of the founder

to such persons as he has directed. Of this kind, are hospitals for the relief or maintenance of the sick, and for the promotion of learning and piety.

Civil corporations are erected, some for the advancement and regulation of manufactures and commerce, such as the guilds or companies of London; some for the advancement and improvement of any particular science, such as the College of Physicians, the Royal Society, and such like; some again, for the good government of a city, town or particular district, such as the mayor, aldermen and burgesses of a borough, and these last are termed municipal corporations (a).

A municipal corporation, therefore, is a civil corporation aggregate, established for the purpose of investing the inhabitants of a particular borough or place with the power of self-government, and with certain other privileges and franchises.

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(a) See 1 Bl. Com. *ut supra*, and authorities there cited.

## CHAPTER II.

### *Of the Creation of Corporations.*

No corporation can exist without the consent of the Crown, either express or implied.

Corporations which have been established within the time of legal memory, are created either by royal charter or by Act of parliament, in both of which the royal consent is expressly given.

Some corporations exist at common law ; others by prescription ; of these latter, the corporation of the city of London is an example. In both these classes the corporations have existed from before the time of legal memory, and the royal consent is implied.

The Crown has no power to compel the inhabitants of any city or town to accept a municipal charter ; no such charter being valid, unless the inhabitants or a majority of them express their acquiescence therein.

A list of the municipal corporations which existed in England and Wales, at the time of the passing of the Municipal Corporation Act (*a*) in 1835 is set forth in the schedules (A) and (B) to that Act, all of which either had been created by charter or existed by prescription.

From that time the powers of the Crown as to granting charters of incorporation have been in some measure limited by the provisions of the 141st section of that Act, and the 49th section of the 7 Will. 4 & 1 Vict. c. 78.

The first mentioned Act, after reciting that “ sundry towns and boroughs of England and Wales are not towns corporate, and it is expedient that several of them should be incorporated,” enacted that “ if the inhabitant householders of any town or

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(*a*) 5 & 6 Will. 4, c. 76. App. p. lix.

borough (b) in England and (c) Wales shall petition His Majesty to grant to them a charter of incorporation, it shall be lawful for His Majesty, by any such charter, if he shall think fit, by the advice of his privy council, to grant the same, to extend to the inhabitants of any such town or borough within the district, to be set forth in such charter, the powers and provisions in this Act contained : provided nevertheless, that notice of every such petition, and of the time when it shall please His Majesty to order that the same be taken into consideration by his privy council, shall be published by royal proclamation in the *London Gazette*, one month at least before such petition shall be so considered."

Some doubts having arisen as to whether the Crown could grant a new charter of incorporation to a town which already had a charter before the passing of the Municipal Corporations Act, the provisions of the 141st section of that Act are re-enacted by the 49th section of the 7 Will. 4 & 1 Vict. c. 78, and the Crown is thereby empowered to grant a charter of incorporation to a town or borough, "whether such town or borough be or be not a corporate town or borough, or be or be not named in either of the schedules" to the Municipal Corporations Act; and it is further enacted, that the publication in the *London Gazette* "shall not need to be by royal proclamation."

This last mentioned section virtually repealed the 141st section of the 6 & 7 Will. 4, c. 76; which is now actually repealed by the Statute Law Revision Act, 1874 (d).

It would seem, therefore, that although the prerogative of the Crown to grant a general charter of municipal incorporation is not abolished by these statutes, yet a charter containing the privileges and powers mentioned therein can now be granted only where such a petition has been presented, and only then by the advice of the privy council.

(b) As to the meaning of the word *borough*, see 5 & 6 Will. 4, c. 76, s. 142 (The Interpretation Clause. App. p. lviii) and *Bruce v. Wait*, 1 M. & G. 1, note.

(c) This should have been *or*. By sect. 49 of the 7 Will. 4, and 1 Vict. c. 78 (see next paragraph above), it is enacted "that if the inhabitant householders of any town or borough in England *or* Wales shall petition, &c."

(d) 37 & 38 Vict. c. 35.

The words of both these statutes are, "if the inhabitant householders of any town or borough, &c., shall petition, &c."

If however, a charter of incorporation has been granted upon the petition of the inhabitants, and it should afterwards appear that such petition had not been presented by the whole or the majority of the inhabitant householders, the charter will nevertheless be valid (a). It may perhaps be presumed that if a large minority of such householders were opposed to the petition for a charter, the privy council would not advise the Crown to grant the same. Although in a case where the inhabitant householders of a borough amounted to 48,000, and a petition for a charter had been signed by 4,000, and a counter petition praying the Crown not to grant a charter had been signed by 6,000 ; and the charter had been granted, it was held (b) that the second petition did not necessarily in point of law deprive the Crown of the power to grant such charter upon the first petition ; but that whether the first petition was, under all the circumstances, the petition of the inhabitant householders of the borough, so as to authorize the exercise of the powers conferred by the 7 Will. 4 & 1 Vict. c. 78, s. 49, was a question of fact for a jury ; and that the determination of the privy council to advise the Crown to grant the charter upon such petition, was not conclusive of its validity.

A charter may be granted to a part only (to be defined therein) of the borough from the whole of which the petition emanated, and need not be conferred upon the inhabitant householders of the whole borough ; and the Crown may, by its common law prerogative, appoint in such charter the number of and set out the wards in the new borough (b).

The court will not allow the legality of the charter to be tried on a motion for a *quo warranto* information against an officer appointed by the corporation (c) ; nor indirectly to be questioned on a motion to quash a rate by the county justices on the borough (d).

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(a) *R. v. Boucher*, 3 Q. B. 641 ; 2 G. & D. 737.

(b) *Rutter v. Chapman*, 8 M. & W. 1.

(c) *Reg. v. Taylor*, 11 A. & E. 949.

(d) *Reg. v. Boucher, ut supra*.



It may be here noticed that a corporation, as altered by the Municipal Corporation Act, is but a continuance of the old corporation (*e*).

The consideration of what parties would fall under the denomination of "inhabitant householders," is reserved to another portion of this work, where the question will be fully discussed (*f*).

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(*e*) *Attorney-General v. Kerr*, 2 Beav. 420.

(*f*) *Post*, chap. vi. ss. 1, and 3.

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## CHAPTER III.

### *Of the Incidents of a Corporation.*

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#### SECTION 1.

##### *Of a Corporate Name.*

It is essential that every corporation should have a name bestowed upon it at the time of its incorporation, which name is, according to Sir Edward Coke, as the proper name or name of baptism of a private individual. And by that name alone the corporation must perform all its corporate acts, and must be described in all documents and legal proceedings (*a*).

But a minute variation in this respect is not material (*b*), and a liberal interpretation has in this respect always been exercised in cases of grants and devises, where the object has been to ascertain the intention of the grantor or testator, and the courts have been disposed to give effect to that intention where it was plain what precise corporation was meant (*c*).

The name of a municipal corporation generally consisted of an enumeration of the component parts of its government, such as "the mayor, bailiffs and burgesses of the borough of ———." The names of the corporate boroughs that were in existence at the time of the passing the 5 & 6 Will. 4, c. 76, will be found in the schedule to the Act (*d*).

By the 6th section of that statute (*e*) it is enacted, that in future the name of the body corporate of every borough shall be "the mayor, aldermen, and burgesses" of such borough.

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(*a*) See 10 Rep. 28, 122; Gilb. Hist. C. P. 182; *R. v. Morris*, cit. 2 Ld. Raym. 1238.

(*b*) *Lyme Regis*, (*Mayor, &c.*) case of, 10 Rep. 122; *R. v. Croke*, Cowp. 29.

(*c*) 10 Rep. 57, *b*; 124, *b*; *Chesterfield (Aldermen)*, case of, Cro. Eliz. 35. See also *Croydon Hospital v. Farley*, 6 Taunt. 467; *Attorney-General v. Rye*, (*Mayor, &c.*) 7 Taunt. 546.

(*d*) *Post*, App.

(*e*) App., p. vii.

Where the town corporate is a *city*, the proper appellation of the body corporate will now be, "the mayor, aldermen and citizens" of the city (*f*).

This statutable uniformity in the title of corporations will prevent objections being taken as to the correctness of their description; such objections, however, were not very frequent, and were not favoured by the court (*g*).

The Act does not create new corporations, though in many cases it alters the name of incorporation, and makes new provision with respect to the constitution of the corporate body (*h*). Where a corporation declaring in covenant by their modern name, stated that the citizens, &c., were from time immemorial incorporated by divers names of incorporation, and that at the time of making the indenture by A. B., declared on, were known by a certain other name, by which name A. B. granted to them a certain water-course, and covenanted for quiet enjoyment; it was held that the deed granting the water-course to them by such name, was evidence as against the defendants, who claimed under the grantor, that the corporation were known by that name at the time, upon an issue taken on that fact (*i*).

(*f*) *Attorney-General v. Worcester (Corp.)*, 2 Phill. 3; *Rochester (Corp.) v. Lee*, 15 Sim. 376.

(*g*) See *Stafford (Mayor, &c.) v. Bolton*, 1 B. & P. 40; see also *Doe d. Malden v. Miller*, 1 B. & A. 699.

(*h*) By Patteson, J., in *Ludlow (Corp.) v. Tyler*, 7 C. & P. 537. See also by Parke, B. in *Doe d. Bristol Hospital (Governors) v. Norton*, 11 M. & W. 929; and see *Attorney-General v. Kerr*, 1 Beav. 420; *Attorney-General v. Newcastle (Corp.)*, 5 Beav. 15; *Attorney-General v. Leicester (Corp.)* 9 Beav. 546.

(*i*) *Carlisle (Mayor, &c.) v. Blamire*, 8 Ea. 487.

## SECTION 2.

*Of the Corporate Seal; and herein of Corporate Acts, that must be done by Deed.*

Another incident of a corporation is the having and using a common seal, by which the body corporate is considered to express their aggregate intention, as they cannot do so by any personal act or oral discourse. The individual members, indeed, may manifest their private assent to any act by words, or by signing their names, but that will not bind the corporation; it is only the affixing of the seal which unites the several assents of the individuals who compose the community, and makes one joint assent of the whole (a).

It is not necessary that there should be any clause in the charter of incorporation empowering them to use a seal; as it is a necessary incident to the existence of a corporation that it should have one, and as soon as the corporation is established, the body may make and use what seal they will (b).

It is laid down that a corporation may do acts upon record without their common seal, but not acts *in pais* (c); that is to say, that although in all matters which are not of record, any act, in order to bind the corporate body, must be witnessed by the affixing of their common seal, yet a corporation will be bound by any admission made upon record, as in the pleadings in the course of a cause, although such admission is not under their seal.

Generally speaking, when the corporate seal appears affixed to a document it will be presumed to have been regularly so affixed; and the party who impugns its legality has the burden cast upon him of showing in what manner the annexation was illegal or irregular (d).

Where the corporate seal has been affixed to an instrument without the authority of the corporate body, it is invalid, and may be repudiated by them (e).

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(a) Dav. Rep. 44, 48.

(b) *Sutton's Hospital (Case of)*, 10 Rep. 30.

(c) *Thetford (Mayor's) Case*, 1 Salk. 192, S. C., Holt, 171.

(d) See Skinn. 2.

(e) *Aion*, 12 Mod. 423.

The due affixing of the corporate seal is sufficient to give validity to an instrument without a formal delivery (*f*). But where the corporate seal was regularly attached to a conveyance, but at the same time the clerk of the corporation was ordered to retain the conveyance in his hands until some accounts were settled with the purchasers, it was held that the conveyance did not pass the estate (*g*).

It appears that if a regular corporate resolution has been passed for granting an interest in the corporate property, and upon the faith of it expenditure has been incurred, the Court of Chancery will compel the corporation to make a legal grant in pursuance of the resolution, although it is not under the corporate seal (*h*).

The annexation of the corporate seal being necessary for the purpose of expressing the assent by the corporate body to any act or thing, it follows that any corporate act, or at least any act of importance, must be by deed (*i*).

Thus a corporation could not, even before the statute of frauds, grant or surrender a lease without deed (*k*); yet they may make such surrender by operation of law, as by accepting a new lease (*l*).

So, the appointment of a person to do any act which concerns the real property of the corporation, or by which their rights are to be asserted, must be by deed (*m*): such, for example, as the appointment of an attorney to make or to take livery of seisin (*n*), or to conduct (*o*) or appear in a suit (*p*), or to manage the affairs of the corporation (*o*); and an attorney not appointed

(*f*) See 1 Ventr. 257; 1 Lev. 46; Carth. 160.

(*g*) *Derby Canal Company v. Wilmot*, 9 Ea. 360. See also *Hill v. Manchester Waterworks Company*, 5 B. & Ad. 866; *Clarke v. Imperial Gas Company*, 4 B. & Ad. 315.

(*h*) *Marshall v. Queenborough*, 1 Sim. & St. 520.

(*i*) Bro. Ab. *Corporation*, 63; Y. B. 21 E. 4. 13.

(*k*) Plowd. 150.

(*l*) See 10 Rep. 67.

(*m*) Bro. Ab. *Corporation*, 54, 56; Y. B. 7 E. 4. 14; 12 H. 7. 25, 26; 16 H. 7. 2; 13 H. 8. 12.

(*n*) Bro. Ab. *Corporation*, 51.

(*o*) *Arnold v. Poole (Mayor, &c.)*, 4 M. & G. 860.

(*p*) See Plowd. 91.

under seal cannot recover for business done, although the council of the borough had passed a resolution directing that the business should be done by him, and was cognizant of its progress (*a*).

So an agreement not under seal by a corporation with one of its officers, for an increase of the salary of an office retained by him, as a compensation for the loss of another office of which he was deprived under the Municipal Corporation Act, though upon an executed consideration, is not binding upon the corporation (*b*).

But an attorney to a corporation may be appointed in a court of record, without any other writing than the record itself, because the corporation would be estopped by the record from repudiating their own acts (*c*).

A corporation may prove a debt in bankruptcy, by an affidavit of a person authorized by a general power of attorney, and they may vote in the choice of assignees by a person authorized thereto by a special power of attorney, such powers of attorney being under the corporate seal (*d*).

A presentation of a clerk to a living by a corporation must be by deed (*e*).

A corporation cannot command their bailiff to enter into land of their own leasing for years, for a condition broken, without deed (*f*). Nor can they, without deed, appoint a person to seize goods as forfeited to their use (*g*).

Generally speaking, the appointment of all subordinate corporate officers, such as bailiffs (*h*), &c., must be by deed; but when once appointed, they may perform any act incident to the nature of their office, without any special commandment by deed or otherwise (*i*).

(*a*) *Arnold v. Poole (Mayor, &c.)*, 4 M. & G. 860.

(*b*) *R. v. Stamford (Mayor, &c.)* 6 Q. B. 433.

(*c*) See 1 Salk. 192, and *Arnold v. Poole (Mayor, &c.)*, *ut supra*..

(*d*) *Bank of England (Ex parte)*, 1 Swanst. 10.

(*e*) *Bro. Ab. Corporation*, 83.

(*f*) 1 Ro. Ab. 514. And see Dy. 102, pl. 83.

(*g*) *Horne v. Ivy*, 1 Vent. 47; S. C. 1 Mod. 18; Cit. 3 P. Wms. 424.

(*h*) See *Vavasor's Case*, Moo. 552.

(*i*) Y. B. 4 H. 7. 6, 13, 17; 7 H. 7. 9.

And an appointment by deed is not necessary in cases where the acts to be performed are of daily occurrence, and too insignificant to be worth the trouble of affixing the corporate seal; such as the employment of a butler (*k*).

So, where the act to be done requires to be executed immediately; as where cattle are to be distrained damage feasant, which might escape before the formality of executing a deed could be gone through (*l*); in such a case the verbal authority of the mayor would be sufficient (*m*).

It is said that it is only in cases of necessity, occasioned by the hurry of the proceedings, that such a course can be pursued (*n*); yet it has been decided that a corporation may appoint a bailiff to distrain without deed, because the distress vests no interest in them (*o*).

It has been seen that a corporation cannot grant a lease without deed; nor can they make any contract except under seal (*p*). Thus they cannot enter into a contract to pay a sum of money out of the corporate funds, for making improvements within the borough, except under the common seal (*q*); and it seems doubtful whether they can borrow money except under seal (*r*).

But though a contract put in suit by a corporation is on their part executory only, and not executed, there seems little doubt that their suing on the contract would amount to an admission on record by them that such contract was duly entered into on their part so as to bind themselves, and that such admission on the record would stop them from setting up as an objection in a cross action, that it was not sealed with their common seal (*s*).

Where a contract has been executed—that is where the person who is a party to the contract has received the benefit

(*k*) *Horne v. Ivy*, *ut supra.*, p. 12, Bro. Ab. Corporation, 56.

(*l*) *Manby v. Long*, 3 Lev. 107.

(*m*) *Randall v. Deane*, 2 Lutw. 1497.

(*n*) See *East London Waterworks Company v. Bailey*, 4 Bing. 287.

(*o*) *Carey v. Matthews*, 1 Salk. 191, 467.

(*p*) See *Fishmongers' Company v. Robertson*, 5 M. & G. 131; 6 Scott, N. R. 56; *Campbell v. Bellericay Union*, 18 L. J. (N. S.) Exch. 282; *Cope v. Thames Haven Company*, Ib. 345.

(*q*) *Ludlow (Mayor, &c.) v. Charlton*, 6 M. & W. 815.

(*r*) *Wilmot v. Coventry (Corp.)*, 1 You. & C. 518.

(*s*) Per Tindal, C. J., in *Fishmongers' Company v. Robertson*, *ut supra.*

of the consideration moving from the corporation (a)—the law will imply a promise, and a deed under seal is not necessary; they may, therefore, sue a party in assumpsit for the use and occupation of lands belonging to them (b).

So, where the mayor of a borough had ordered weights and measures, and when supplied, they were examined at a full meeting of the corporation, this was held to be such a recognition of the contract as would make the corporation liable to pay for them, although there was no order for them under the common seal; and that the fact of the mayor having been afterwards ousted from office by a judgment of the Court of King's Bench made no difference (c).

So, where an indenture was entered into between A. B. and C. bailiffs, and D. E. and F. aldermen, with the assent of the burgesses of the borough of M. of the one part, and J. S. of the other part, whereby the said bailiffs, aldermen and burgesses demised lands to J. S. for years, to be holden of the said bailiffs, aldermen and burgesses, and the deed was executed by A. B. and C. and D. E. and F., but not sealed with the corporation seal; and J. S. had paid rent to the bailiffs, as the chief officers of the borough; it was held that their servant might make cognizance for taking a distress under a demise by the corporation, notwithstanding a notice had been given by the aldermen (one of whom was a party to the indenture) to pay the rent to them; for the payment of rent to the bailiffs, admitted a tenancy from year to year under the corporation (d).

(a) *Per Tindal, C.J., in The Fishmongers' Company v. Robertson*, 5 M. & G. 131; 6 Scott, N. R. 56.

(b) *Stafford (Mayor, &c.) v. Till*, 4 Bing. 75; see also *Doe d. Parmington v. Taniere*, 18 L. J. (N. S.) Q. B. 49.

(c) *De Grave v. Monmouth*, C. & P. 111; see also *Sanders v. St. Neot's Union*, 8 Q. B. 812.

(d) *Wood v. Tate*, 2 N. R. 247.



## SECTION 3.

*Of the power to make Bye-Laws.*

A third incident to a corporation which is included by law in the very act of incorporation (*e*), is the power to make bye-laws, or private statutes for the government of the whole body; and these laws are binding upon the members, unless they are inconsistent with, or contrary to, the common or statute law (*f*) or the provisions of the charter of incorporation (*g*).

Where the power of making bye-laws is in the body at large, they might, at common law, delegate their right to a select body, who thus become the representatives of the whole community (*h*). If, however, the charter gave to a select body a power to make bye-laws touching certain matters therein specified, that did not take away from the body at large their incidental power to make bye-laws touching other matters not specified in the charter (*i*).

But since the passing of the Municipal Corporation Act, bye-laws that concern the government of the borough, or the prevention or suppression of nuisances under the penalty of fines, can be made only by the council of the borough, at a meeting where at least a majority of two-thirds shall be present. A copy of such laws must be forwarded to the Secretary of State, and affixed to the town hall or some other public place, forty days before they acquire any force. But such

(*e*) See Hob. 211.

(*f*) By 5 & 6 Will. 4, c. 76, s. 1, "all laws, statutes and usages, &c., as are inconsistent with or contrary to the provisions of this Act shall be and the same are hereby repealed and annulled." This enactment was hardly necessary according to the well known maxim of law: *Leges posteriores priores contraria abrogant*. See 1 Rep. 256; Broom's Legal Maxims, 27. As to inconsistencies between earlier and later statutes see by Lord Kenyon, C.J., in *Williams v. Pritchard*, 4 T. R. 2; and by Lord Denman, C.J., in *R. v. Poor Law Commissioners*, 6 A. & E. 48.

(*g*) *R. v. Cutbush*, 4 Burr. 2204; *Hoblyn v. Regem*, 2 Bro. P. C. 329; *R. v. Cambridge*, 2 Selw. R. P. 1144.

(*h*) *R. v. Spencer*, 3 Burr, 1837.

(*i*) *R. v. Westwood*, 2 Dow. & Cl. 21; 4 Bligh (N. S.), 213; 7 Bing. 1; 4 B. & C. 781.

bye-laws, or any part thereof, shall not come into operation if within that period the Privy Council shall disallow the same ; and the Crown has power at any time within that period to enlarge the time within which such bye-law, if disallowed, shall not come into force (a).

The council has the power of appointing by the bye-laws, the fines for their infringement ; but no fine is to exceed £5 (a).

The provisions of the statute do not, it will be seen, interfere with any existing bye-laws, except such as may be inconsistent with or contrary to that statute (such being repealed by section 1), but relate only to bye-laws made after the passing of the Act.

Bye-laws may be made generally for the regulation of the internal affairs of a corporation ; the conduct of its members ; the reasonable exercise of a right, or the mode by which a person is to be admitted thereto, where he has an inchoate title ; but they cannot take away a right, or impose any unreasonable restraint in the exercise thereof.

The following may be mentioned as instances in which a bye-law has been held valid.

In the city of York, which was incorporated before the time of legal memory, there had been a court from very ancient times, held first before the mayor and bailiffs, and after a charter of Rich. 2, before the mayor and sheriffs. By a bye-law made in 3 & 4 Phil. and Mary, by a select body of the corporation, who had immemorially made rules and regulations as to the practice of the court, and who had at their discretion selected the persons admitted to practice as attornies there, it was ordered, that thenceforth there should be no more than four persons admitted to be attornies of the sheriff's court ; and from that time it did not appear that any more than that number had ever been allowed to practice : it was held that the bye-law was reasonable, and that the usage limiting the number of attornies to four was sufficiently ancient to satisfy the statute 2 Geo. 2, c. 28, s. 11 (b).

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(a) 5 & 6 Will. 4, c. 76, s. 90, App., p. xxxviii.

(b) *R. v. York*, 3 B. & Ad. 770.

In the year 1762 an Act of parliament passed for dividing and enclosing two pieces of open land in the borough of S., over which the corporation of that borough had immemorially exercised the sole right of pasturage, and enacted that they should be divided between and allotted to the lord of the manor and the corporation in certain shares; and that the corporation should have power from time to time to make leases of the allotments so vested in them, for such terms, and with such covenants and agreements as the burgesses in common-hall assembled should think proper. On the 1st of April, in the same year, the burgesses made a "rule, order, and ordinance," whereby, after reciting that they were of opinion that the most beneficial mode for the corporation of enclosing the lands would be to grant leases of them for long terms to such burgesses as were willing to take the same, under covenants to enclose them, it was ordered that no lease should be made to one burgess in the same lease of more than fifty, or less than five acres; "and it being their desire and opinion, that every burgess residing within the borough should receive a benefit from the said inclosure," it was further ordered that certain annual sums out of the rents arising from the inclosure, should be paid and distributed yearly, on every 2nd November, among the twelve senior burgesses residing within the borough, and that no burgess who should take a lease should be entitled to receive any of such money. It was held that this ordinance was a valid bye-law (c).

There also exist in some boroughs certain customs, which may be presumed to have originated in bye-laws, as they can only exist in prescriptive corporations (d); such customs are not, however, in general much favoured, and the courts require them to be incontrovertibly proved (e).

Before the passing of the Municipal Corporation Act, bye-laws in restraint of trade were considered bad, unless they

(c) *Hopkins v. Swansea (Mayor, &c.)*, 4 M. & W. 621. S. C. in error, 8 M. & W. 901.

(d) See *Vaughan v. Lewis*, Carth. 228; *Bolton v. Throgmorton*, Skin. 55.

(e) See *Wilson v. Wilks*, 2 Ld. Raym. 1133; *York v. Welbank*, 4 B. & A. 440.

were supported by a custom in the borough, when they would be upheld (*a*). But a bye-law to support a custom, giving a penalty to any but the corporation, has been held bad (*b*). So also has a bye-law to oblige a person who had a right to be free of a city to take up his freedom in some particular company (*c*). So a bye-law founded on a custom to include foreigners, and authorizing a distress for a penalty in case of a breach of the bye-law, without a previous demand or refusal of such penalty (*d*).

And now all bye-laws and customs prohibiting persons other than freemen, &c., from carrying on trade within a borough, are abolished by the Municipal Corporation Act (*e*).

A corporation, however, may regulate the manner of carrying on a trade within the borough, so far as to prevent monopoly or the sale of unfit commodities, or to insure the proper conduct of those who trade within the borough (*f*), or to protect the safety or health of the public.

Upon this principle, a bye-law to prohibit gunpowder from remaining within a harbour for more than twenty-four hours, has been held good (*g*); so a bye-law has been upheld which prohibited the slaughter of any animal within the walls of a city (*h*).

It has been seen that a bye-law cannot be made to take away an existing right, such as that of a freeman: or to incur a forfeiture of goods, unless such power is expressly given (*i*).

(*a*) See *Hesketh v. Braddock*, 3 Burr. 1847; *Butchers' Company v. Morey*, 1 H. Bl. 370; *Wooley v. Idle*, 4 Burr. 1951; *London v. Compton*, 7 D. & R. 597; *R. v. Harrison*, 3 Burr. 1322; *Shaw v. Poynter*, 2 A. & E. 312; *Jones v. Waters*, 1 C. M. & R. 713; *Clark v. Denton*, 1 B. & Ad. 92; *Clark v. Le Cren*, 9 B. & C. 52; *Leicester v. Burgess*, 2 N. & M. 131; *Perkins v. Cutlers' Company*, 1 Selw. N. P. 1145.

(*b*) *Totterdell v. Glazeby*, 2 Wills. 266.

(*c*) *Harrison v. Godman*, 1 Burr. 12.

(*d*) *Davis v. Morgan*, 1 C. & J. 587.

(*e*) 5 & 6 Will. 4, c. 76, s. 14, App., p. ix.

(*f*) See *Freemantle v. Silk-Throwsters' Company*, 1 Lev. 229, S.C., 1 Keb. 309. See also *Everett v. Grapes*, 3 L. T. (N. S.) 669.

(*g*) *Trinity House v. Crisp*, 2 Show. 95.

(*h*) *Pierce v. Bartrum*; Cowp. 469; see further *Shaw v. Pope*, 2 B. & Ad. 465.

(*i*) *Kirk v. Nowill*, 1 T. R. 118; see also 8 Rep. 125; 1 Wils. 63.

But a corporation may make bye-laws for the amotion of an officer for just cause (*k*).

The proper causes of amotion will be considered hereafter.

It has been laid down as a general rule that any bye-law that is unreasonable, or unjust, or uncertain, is bad (*l*).

Thus a bye-law that if *any person* should be elected to a certain office in the corporation, and should refuse to undertake the office, he should be subject to a certain fine, has been held bad (*m*); as such a bye-law would extend to persons who were not members of the corporation.

So a bye-law inflicting imprisonment as a penalty is invalid (*n*).

But a bye-law imposing a penalty of £5 to the use of the corporation, "or less at the discretion and pleasure of the corporation," is not bad for uncertainty in the amount of the penalty (*o*).

A bye-law which provided that no person should erect any booth, or place any caravan, for the purpose of any show or public entertainment in any public place within the borough, without the license of the mayor, and that any such license given at any other time than fair time should be revoked by the mayor, if three inhabitant householders, residing within 300 yards of the place for which it was granted should memorialise the mayor to revoke it, was held to be unreasonable and bad (*p*).

A bye-law may be good in part and bad in part; but that can only be so where the two parts are entire and distinct from each other (*q*); thus, if a bye-law consists of several distinct and independent provisions, although one or more of these may be void, yet the rest of the bye-law may be valid (*r*).

(*k*) *R. v. Richardson*, 1 Burr. 517; 3 Ld. Ken. 85.

(*l*) See *Bosworth v. Hearne*, 2 Str. 1085, S. C. Andr. 93; *Mitchell v. Reynolds*, 10 Mod. 133; *Carter v. Sanderson*, 5 Bing. 79; *Framework Knitters v. Green*, 1 Ld. Ray, 112.

(*m*) *Oxford (Mayor, &c.) v. Wildgoose*, 3 Lev. 293.

(*n*) *Hutchins v. Player*, Moore, 411.

(*o*) *Piper v. Chappell*, 14 M. & W. 622.

(*p*) *Elwood v. Bullock*, 6 Q. B. 383; 13 L. J. (N. S.) Q. B. 330.

(*q*) By Ld. Kenyon, C. J. in *R. v. Faversham (Company of Fishermen)*, 8 T. R. 356.

(*r*) *Lee v. Wallis*, 1 Ken. 295.

But if a bye-law be entire, and one part be void, it is void altogether. Thus if a bye-law, instead of being limited to those within the jurisdiction of the corporation, professes to extend to strangers also, it is void not only as to the latter, but also as to the members of the corporation (a).

Any existing bye-law may be repealed by the corporate body (b), but it must be done by a new law made for that purpose, which, like every other bye-law, must now be submitted to the Secretary of State under the provisions of the ninetieth section of the Municipal Corporation Act.

Offences against any bye-law made by virtue of that Act, are punishable by summary conviction before a magistrate. The prosecution for any such offence must be commenced within three calendar months after the commission thereof (c).

It has been decided that a bye-law cannot be objected to in a summary way upon motion, on return to a *habeas corpus*, except in cases from London (d). But the validity of a bye-law may be tested in an action to recover a penalty, where that is the proper mode of proceeding (e); or where a penalty has been enforced by distress, by an action of trespass (f) or in proceedings to enforce a penalty before justices (g).

Evidence of a practice in contravention of a bye-law is not receivable (h).

(a) *Dodwell v. Oxford (University)*, 2 Vent. 34.

(b) *R. Ashwell*, 12 Ea. 22; *R. v. Westwood*. 4 B. & C. 806.

(c) See 5 & 6 Will. 4, c. 76, ss. 91, 127, App., pp. xxxviii, liii.

(d) *Bellard v. Bennett*; *Same v. Clement*, 2 Burr. 775.

(e) *Piper v. Chappell*, 14 M. & W. 624.

(f) *Moir v. Munday*, Sayer, 181, 185.

(g) *Everett v. Grapes*, 3 L. T. (N. S.) 669.

(h) *Sells v. Brown*, 9 C. & P. 601.

## SECTION 4.

*Of the Power of Purchasing and Alienating Corporate Property.*1. *Of Purchase.*

A fourth incident to a corporation is the power to purchase and hold lands and other property for the benefit of themselves and their successors and to alien the same.

And first of the power to purchase.

At common law it seems that corporate bodies were capable of purchasing lands to the benefit of themselves and their successors. But by the various statutes of mortmain they were prohibited from purchasing more lands without a license from the Crown. At the Revolution it was declared (*i*) that the power of dispensing with statutes claimed on the part of the Crown was illegal and void. And as it was afterwards considered that this might be construed into a prohibition against the exercise of the royal power in granting licenses to corporations to take lands, it was thought prudent to give a legislative sanction to such licenses. Accordingly, by the 7 & 8 Will. 3, c. 37, it was enacted, that it should be lawful for the Crown to grant to any corporation licenses to alien in mortmain, and also to purchase, acquire, take and hold in mortmain, in perpetuity or otherwise, any lands, tenements, rents or hereditaments whatsoever.

Corporations, therefore, may now, upon obtaining the royal license, purchase real property to any extent.

Where the body corporate of any city or borough has not power to purchase or acquire land and hereditaments, or to hold land in mortmain, if the council deem it expedient to purchase or otherwise acquire for public purposes any hereditaments, they may represent the circumstances to the Treasury, and with their approbation they may purchase or acquire

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(*i*) By 1 Will. & M. sess. 2, c. 2.

any hereditaments on such terms and conditions as have been approved of by the commissioners; and with the like approval they may charge, by way of mortgage or otherwise, the hereditaments so purchased, or any others of the body corporate, or the borough fund (*a*), or borough rate, with the payment of the purchase money and interest (*b*). Notice of the application and liberty to inspect a copy of the memorial are to be the same as in the case of an application in relation to a disposition of hereditaments (*c*).

By the 9 & 10 Vict. c. 74, s. 24, "the council may from time to time contract for the purchasing or renting any lands necessary" to establish public baths and wash-houses;" and the property therein shall be vested in the mayor, aldermen, and burgesses." And now by 23 Vict. c. 16, s. 8 (*d*), the council of any corporation which has not the power to acquire land may do so for public purposes on obtaining the consent of the Treasury (*e*), and the council may, with the like consent, raise the necessary funds by mortgage of the land to be purchased, or any other corporate hereditaments, or the borough fund (*a*).

By sect. 9, if the answer of the Treasury shall not be altogether favourable, a copy of the correspondence shall for one month be kept in the town clerk's office for inspection.

With regard to personal property, as the statutes of mortmain have no reference thereto, corporations are capable of taking that species of property to any amount (*f*).

One body corporate cannot be joint tenant with another; as in that case there could be no survivorship, both bodies being perpetual; and survivorship is a necessary incident of that species of tenure. Nor can a body corporate be joint tenant, with a natural person, because the latter cannot have the benefit of survivorship. But a corporate body and a natural person

(*a*) See *Attorney-General v. Birmingham (Corp.)*, L. R. 3 Eq. 104.

(*b*) 23 Vict. c. 16, s. 8, App., p. clxvi.

(*c*) *Id.* See 5 & 6 Will. 4, c. 76, s. 94, App., p. xli, and *post*, p. 24.

(*d*) *Ut supra*.

(*e*) See 23 & 24 Vict. c. 106, s. 6.

(*f*) See 1 Kyd, Corp. 104.



may be tenants in common together, as survivorship is not an incident of that tenure (*g*).

## 2. Of Alienation.

Before the passing of the Municipal Corporation Act the legislature had, by the 2 & 3 Will. 4, c. 69 (*h*), interfered to prevent the waste and dissipation of corporate property, by its application towards the expenses attendant upon parliamentary elections, and enacted, that it should not be lawful for any municipal corporation to pay or apply any money or personal chattel belonging to the corporation in discharge of any such expenses; and that all bonds, &c., for the securing the same should be void (*i*).

That any gifts, payments, &c., made by any corporation for the purpose of inducing any person to exert himself in elections at a future time should be considered to be within the Act (*k*).

That all conveyances, leases, &c., of real property for the purpose of satisfying or securing any expenses prohibited by the Act should be void (*l*).

That all votes or resolutions passed by any corporate body directing or authorizing any payment forbidden by the Act should be void (*m*).

That any corporate officer who should make any payment contrary to the Act should be individually liable to repay and make good the value thereof to the corporation (*n*).

That any two corporators might bring actions or suits in the name of the corporation against any person offending against the Act (*o*).

And that any member of a corporation offending against the Act should be guilty of a misdemeanor, and for ever after disabled from holding any office in the same corporation (*p*).

The power of disposing of the real property belonging to the

(*g*) Co. Lit. 190 *a*.

(*h*) App., p. i.

(*i*) Sec. 1 (*Ib.*)

(*k*) *Id.* sec. 2 (*Ib.*)

(*l*) *Id.* sec. 3, App., p. ii.

(*m*) *Id.* sec. 4 (*Ib.*)

(*n*) *Id.* sec. 5.

(*o*) *Id.* sec. 6.

(*p*) *Id.* sec. 7, App., p. iii.

corporation has been still further limited by the provisions of the Municipal Corporation Act, whereby the council are restrained from selling, mortgaging or alienating the lands, tenements or hereditaments of the body corporate; or from granting leases for a term exceeding thirty-one years, to be computed from the making such lease, except leases of buildings or leases for building or improvement, which may be granted for seventy-five years, either at a reserved rent or a fine, unless with the approbation of the Lords of the Treasury (a).

If the corporation desire to sell, mortgage or alienate or in any other way dispose of any of the corporate lands (b), or to grant any lease for a longer term than thirty-one years, or upon different terms and conditions than those above mentioned, in order to obtain the necessary sanction of the Lords of the Treasury—

1st. A notice of their intention to apply to the Treasury must be fixed on the outer door of the town hall, or in some public and conspicuous place within the borough, one calendar month at least before such application; and

2ndly. A copy of the memorial intended to be sent to the Treasury, must be kept in the town clerk's office during such month, and be freely open to the inspection of every burgess at all reasonable hours during that period.

If the answer of the Treasury is not wholly favourable, a copy of the correspondence shall be kept for inspection at the town clerk's office as in the case of an application to purchase land (c).

The council, however, may grant a renewal of any lease—

1st. Where on the 5th of June, 1835, they were under a covenant or agreement, express or implied, to renew;

(a) 5 & 6 Will. 4, c. 76, s. 94, App., p. xli. This section also excepted sales, leases, &c., made in pursuance of contracts *bonâ fide* entered into on or before the 5th of June, 1835; or of some resolution duly entered in the corporation books, on or before that day.

(b) The power of disposing of corporate lands with the consent of the Treasury is extended to exchanges and mortgages and every other disposition, by 6 & 7 Will. 4, c. 104, s. 2, App., p. lxxii. The word "mortgage" was in the first part of sect. 94 of 5 & 6 Will. 4, c. 76, but had been omitted in the proviso, App., p. xlii.

(c) *Ante*, sect. 1, p. 22 (23 & 24 Vict. c. 16, s. 9), App., p. clxvi.

2ndly. Where they have been enjoined by any deed, will or other document to renew ;

3rdly. Where such renewal has been sanctioned by ancient usage, or by custom or practice ; or

4thly. Where the corporation shall have ordinarily made renewal (*d*).

By the 23 Vict. c. 16 (*e*), s. 1, where the Treasury approves of any mortgage of corporate property, they may require that the money borrowed shall be repaid, with interest, within thirty years, either by instalments or by means of a sinking fund (the method of raising which is pointed out in sect. 2) or by both.

This statute also enacts (sect. 3) that if any money, which had been paid into the Bank of England under any Act for the purchase of hereditaments belonging to a corporation, is paid out, the Treasury may require provision to be made for replacing the amount ; but it is provided that this enactment is not to apply to money where provision for its application is contained in any local Act.

By sect. 4, if the Treasury authorize the sale of any corporate hereditaments, they may direct the investment of the proceeds in government securities or otherwise ; and by sect. 5 they are empowered to apply certain investments for the benefit of the borough ; but they are not bound as a condition of their assent to direct the investment of the proceeds.

By sect. 7, any person misappropriating monies arising from the sale of annuities, &c., or any dividends, is guilty of a misdemeanor (*f*).

By sect. 10, the corporation may submit to the Treasury a scheme for the payment of any existing borough mortgage-debt in the same manner as where provision is made for the repayment of money borrowed on mortgage (under sect. 1) except as to the limitation of thirty years.

And sect. 11 contains provisions as to the consolidation and payment of debts incurred under the authority of any Act of parliament.

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(*d*) 5 & 6 Will. 4. c. 76, ss. 94, 95 ; 6 & 7 Will. 4, c. 104, s. 2. See note (*b*) last page.

(*e*) *Post*, App. p. clxiii.

(*f*) To be dealt with as under the 20 & 21 Vict. c. 54 ; "An Act to make

The Land Clauses Consolidation Act, 1845 (*a*), which generally authorizes the taking of lands for undertakings of a public nature, does not enable a corporation to sell for such purposes, without the approbation of the Treasury, lands which could not have been sold without such approbation, other than such lands as the company are by any Act empowered to purchase compulsorily.

With the like approbation a corporation may grant lands for the establishment of public baths and wash-houses (*b*), or as public grounds for recreation, or as play grounds (*c*), or for the erection of public libraries and museums (*d*), or make grants or leases of land for the sites of working men's dwellings (*e*); as well as for some similar purposes which will be mentioned in the course of this work.

They may also transfer buildings or land to the Secretary of State for War for barracks, &c., and for this the consent of the Treasury is not required (*f*). And where they have contributed to the expense of providing any barracks, &c., they are entitled to share in any money paid by the Secretary of State for the transfer (*g*).

There are some further statutory enactments with reference to the extent and mode of dealing with corporate property.

By sect. 139 of the Municipal Corporation Act (*h*), all advowsons, rights of preservation or nomination to any benefice

better provision for the punishment of frauds committed by trustees, bankers, and other persons intrusted with property."

(*a*) 8 Vict. c. 18. See sect. 15.

(*b*) 9 & 10 Vict. c. 74. "An Act to encourage the establishment of public baths and wash-houses." By sect. 24 "in any borough the council, with the approval of the commissioners of Her Majesty's Treasury, may from time to time appropriate for the purposes of this Act in the borough any lands vested in the mayor, aldermen, and burgesses."

(*c*) 22 Vict. c. 27. "An Act to facilitate grants of land to be made near populous places for the use of regulated recreation of adults, and as play grounds for children." By sect. 3, "with respect to lands belonging to any municipal corporation, such grant may be lawfully made by the body corporate, with the consent of the commissioners of Her Majesty's Treasury, signified by their executing the deed of conveyance."

(*d*) 18 & 19 Vict. c. 70, s. 18, App., p. cxlii.

(*e*) 37 & 38 Vict. c. 59, *post*, App. p. ccliii.

(*f*) See 35 & 36 Vict. c. 68, s. 10, *post*, App. p. ccxli.

(*g*) 36 & 37 Vict. c. 68, *post*, App. p. ccxlix.

(*h*) *Post*, App. p. lvii.

or ecclesiastical preferment in the gift of any body corporate in their corporate capacity, and not as charitable trustees, shall be sold at such time and in such manner as the ecclesiastical commissioners (*i*) may direct, so that the best price may be obtained for the same :

The council, with the consent of three of the commissioners at least, are authorized and required to convey and assure such advowsons, &c., to the purchaser :

If any vacancy take place before such sale, the bishop or ordinary of the diocese is to present.

The proceeds of the sale are to be paid to the treasurer of the borough ; and be invested by him in government securities, for the use of the corporation ; and the annual interest payable thereon, is to be carried to the account of the borough fund. But under the direction of the council, he may apply the proceeds of such sales towards the liquidation of any debt contracted by the corporation before the passing of that Act (*k*).

In some instances corporations were seised of lands under an obligation to nominate curates, preachers, and ministers, &c., with no fixed stipend, and for want of any regular endowment the curacies had not become perpetual cures or benefices presentative within the 1 Geo. 1, c. 10 (*l*), or 36 Geo. 3, c. 83 (*m*), and doubts having arisen whether the right of nominating such ministers could be sold under the 139th section of the Municipal Corporation Act, it was declared and enacted by the 1 & 2 Vict. c. 31, s. 1 (*n*), that every right of such nomination might be sold, and that after such sale every such curacy, &c., should become a benefice presentative within the meaning of 36 Geo. 3, c. 83, and that every such curate and his successors should be a body corporate within the meaning of 1 Geo. 1, c. 10.

The effect of holding a curacy to be within the 1 & 2 Vict. c. 31, is to bring it also within sect. 139 of the Municipal Corporation Act ; and the case is the same as if the descriptive

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(*i*) See 6 & 7 Will. 4, c. 77. s. 26.

(*k*) 6 & 7 Will. 4, c. 104, s. 3, *post*, App. p. lxxiii.

(*l*) See sec. 4.

(*m*) See sec. 3.

(*n*) *Post*, App. p. xcii.

words of the later statute had been actually inserted in the 139th section of the former Act, and had formed part thereof (a).

The Municipal Corporation Act creates a public trust of the corporate property, and of the funds raised for the purpose of the Act, subject, however, like other trust property, to the jurisdiction of the Court of Chancery. And although the Act contains provisions for correcting abuses in respect of the corporate property, there is nothing in it to exclude the ordinary jurisdiction of that court to prevent breaches of trust (b), or the abuse of the power of awarding compensation under the 66th section of the Act, notwithstanding an appeal is given by that section to the Treasury (c).

Where a hospital having a corporate character was established in close connection with a Municipal Corporation, the ex-mayor being the governor, the master and assistants being elected from the corporation, and the mayor and aldermen being visitors; it was held, that the corporation and hospital were in equity incapable of contracting together; and a purchase by the corporation of property belonging to the hospital was set aside (d).

## SECTION 5.

### *Of Suits by or against a Corporation.*

A fifth incident to corporations is the power of suing and being sued by their corporate name.

They may maintain all such suits or actions as are necessary to assert or maintain their rights, and all such suits or actions may be maintained against them for the support of adverse claims.

As a corporation cannot appear in person, they must appear by attorney (e).

(a) *Per Cur.* in *Hine v. Reynolds*, 2 M. & G. 71; 2 Sc. N. R. 394. See the case as to construction of 1 & 2 Vict. c. 31.

(b) *Parr v. Attorney-General* 8 Cl. & Fin.

(c) *Attorney-General v. Poole (Corp.)*, 4 M. & Cr. 17, 30. See also *Attorney-General v. Aspinall*, 2 M. & Cr. 613; *Attorney-General v. Lichfield (Corp.)*, 11 Beav. 120.

(d) *Attorney-General v. Plymouth (Corp.)*, 9 Beav. 67.

(e) *Bro. Abr. Corporation*. 28 Co. Lit. 66, b.; *Sutton's Hospital, Case of*, 10 Rep. 30, b.

If a corporation has a head or any other integral component part, they cannot sue or be sued without it, as in that case the corporation would be incomplete (*f*).

A foreign corporation may sue as such in the courts of this country, but they must prove they are incorporated in the foreign country (*g*).

As all contracts entered into by a corporation must be under seal, it follows that a corporation cannot sue in *assumpsit* on an executory contract (*h*), as such an action is founded on a contract not under seal (*i*).

But they may maintain *assumpsit* upon an executed contract (*k*); as for the use and occupation of land (*l*), or of tolls (*m*). As in such cases the party contracting with the corporation having had the benefit of the fulfilment of the contract, the law will raise an implied promise in favour of the corporation on which they may sue in their corporate character (*n*); and it is no action of *assumpsit* by the corporation, that the corporation itself was not originally bound by the contract, by reason of its not having been made under their common seal.

A plea, therefore, to an action by a corporation on an agreement which had been executed, that the plaintiffs were a corporation aggregate, and that the agreement was not entered into by them under the common seal of the corporation, or by any person authorized under seal, is bad on demurrer (*o*).

It seems also, that even if the contract had been executory only

(*f*) Bro. Abr. *Corporation*. 43 Co. Lit. 66, b.

(*g*) *St. Charles Bank v. De Bannales*, 1 C. & P. 569; *S. C.* 1 Ry. & Moo. 190.

(*h*) See *East London Water Works Co. v. Bailey*, 4 Bing. 283.

(*i*) As to trading corporations, see *Church v. Imperial Gas Co.*, 6 A. & E. 846; 3 N. & P. 37; *Dunstable v. Imperial Gas Co.*, 3 B. & Ad. 125; *London (City) Gas Co. v. Nicholls*, 2 C. & P. 365; *East India Co. v. Glover*, 1 Stra. 612; *Gibson v. East India Co.*, 5 Bing. N. C. 270.

(*k*) See *The Barber Surgeons of London v. Pilson*, 2 Lev. 252; *Rochester (Dean and Chapter) v. Pearce*, 1 Camp. 466.

(*l*) *Stafford (Mayor, &c.) v. Till*, 4 Bing. 75.

(*m*) *Carmarthen (Mayor, &c.) v. Lewis*, 6 C. & P. 608.

(*n*) See further *Beverley v. Lincoln Gas Co.*, 6 A. & E. 839; 2 N. & P. 283.

(*o*) *London (City) v. Goree*, 1 Vent. 298. See also *Exeter (Mayor, &c.) v. Trimlet*, 2 Wils. 95; *Yarmouth (Mayor, &c.) v. Eaton*, 3 Burr. 1402; *Kingston-upon-Hull (Mayor, &c.) v. Horne*, Cowp. 102.

on the part of the corporation, their suing upon it might amount to an admission on record by them, that such contract was duly entered into on their part, so as to be obligatory upon themselves; and that such admission on the record would stop them from setting up an objection in a cross action, that the contract was not sealed with their common seal (*a*).

*Assumpsit* will also lie for duties leviable within the jurisdiction of the corporation, such as the duty of scavage, due by the custom of London (*a*).

*Debt* also will lie for such duties (*b*), or for penalties incurred by breaches of the bye-laws of the corporation (*c*).

So *debt* will lie upon a bond given to the corporation; but a corporation cannot sue upon a bond made to the mayor in his own proper name (*d*).

On the other hand, the mayor of a corporation, who on the sale of certain corporate lands by auction, signed a contract on behalf of himself and the corporation with the purchaser, for the due performance of the conditions of sale, cannot, in his individual capacity, sue the purchaser for a breach of the contract (*e*).

A corporation may maintain *trespass* for a trespass committed upon their lands or other possessions; or *case*, as for disturbance in holding their courts, or taking the profits of liberties granted to the corporation, or against the sheriff of the county for executing process within the jurisdiction of the corporation, where the return of writs has been granted to them (*f*).

They may also maintain *trover*, or *ejectment* (*g*).

In *ejectment* by a corporation, it is not necessary that the

(*a*) *Fishmongers' Co. v. Robertson*, 5 M. & G. 131; 6 Scott, N. R. 56. See also *Liverpool Borough Bank v. Eccles*, 4 H. & N. 139.

(*b*) See *Hardres*, 486, and the cases cited in note (*a*).

(*c*) See *Butchers' Co. v. Bullock*, 3 B. & P. 434; *Feltmakers' Co. v. Davis*, 4 B. & P. 98.

(*d*) Y. B. 21 E. 4, 15; Dy. 48.

(*e*) 2 Taunt. 374, 387.

(*f*) 1 Rol. Rep. 118.

(*g*) See 1 Anderson, 202, 248.



demise should be stated to be by deed ; and if so stated, it need not be proved (*h*).

A corporation may institute a *suit in equity* for setting aside transactions fraudulent as against it, although carried into effect in its name by members of the governing body : and such right is not affected by the attorney-general having also power to call in question such transaction (*i*).

A suit or action by a corporation, does not abate by the death of one of the members (*k*) ; for the body still remains a corporation.

A *criminal prosecution* will also lie at the instance of a corporation ; but they should be described in the indictment by their corporate name (*l*).

In the case of an action *against* a corporation, it has been enacted, that the writ of summons in personal actions may be served on the mayor, or on the town clerk, or clerk or treasurer of such corporation (*m*).

But this enactment does not apply to actions of *ejectment* or *quare impedit*, which may still be commenced by original writ (*n*).

If a corporation does not enter an appearance to the writ of summons or original process, the proper proceeding is by *distringas*, which should go against them in their public character ; and under this process the sheriff is authorized to distrain the lands and goods belonging to the corporation.

If a party has sustained injury by the act of others who he has reason to suppose acted under the authority of a corporation, and he is unable to ascertain that fact, he may file a bill of discovery in equity against them and any of their officers,

(*h*) 2 Wms. Saund. 305, b. n. (*c*).

(*i*) *Attorney-General v. Wilson*, 1 Craig. & Phil. 1.

(*k*) *Blackburn v. Jepson*, 3. Swans. 138.

(*l*) *R. v. Patrick*, 1 Leach, C. C. 253 ; S. C. 2, Ea. P. C. 1059.

(*m*) 2 Will. 4, c. 39, s. 13.

(*n*) As to process against a corporation by original writ, see Com. Dig. *Franchises*, F. 16.

before he brings an action at law, suggesting that he intends to bring one, but cannot do so without the discovery prayed. If however, the discovery of any of the matters prayed for should be prejudicial to the corporation, and would not be material to the plaintiff's case, the defendants are not bound to reveal such facts (a).

An answer in equity must be made under the corporate seal; and if the proper officer refuses to affix the seal, where the majority of the members have agreed to the answer, the Court of Queen's Bench will compel him to do so (b).

A municipal corporation, as altered by the Municipal Corporation Act, being but a continuance of the old corporation (c), where a new corporation is made party to a suit in equity in respect of a breach of trust committed by their predecessors, they are not entitled to costs (d).

*Assumpsit* will not lie against a municipal corporation upon an executory contract for the reasons previously stated (e), but for the same reasons it will lie in the case of an executed consideration; as to recover money wrongfully received by them (f).

Where an attorney had acted for a corporation, sometimes having been retained under their corporate seal, and at other times without that authority; and the corporation had paid him a sum of money in part payment of his bills generally, it was held in an action brought by him against the corporation for the residue, that he was at liberty to appropriate the money so paid to him to that portion of his work which he had performed without a retainer under seal, as there was nothing to impeach the fairness of his bills or the amount due to him in this respect, although, from want of legal form, he might not have been able to sue upon them (g). But a mere resolution of

(a) *Mordelly v. Merton*, 1 Br. Ch. Rep. 471.

(b) *R. v. Wyndham*, Cowp. 317. See *Diggles v. London and Blackwall Railway Company*, 5 Exch. 442, 450, as to where it is inconvenient or impossible to affix the seal.

(c) *Vide supra*, p. 7.

(d) *Attorney-General v. Kerr*, 2 Beav. 420.

(e) *Supra*, p. 29. See also, 1 Rol. R. 82.

(f) *Hall v. Swansea (Mayor, &c.)*, 5 Q. B. 526.

(g) *Arnold v. Poole (Mayor, &c.)*, 4 M. & G. 860; 5 Scott, N. R. 741.

the council, for the increase of salary of a corporate officer though duly entered on the corporation books, is not binding on the corporation not having been made under the common seal (*h*).

*Debt* will lie against a corporation, upon any contract entered into by them under the corporate seal.

By a bye-law, certain corporate lands which had been inclosed by Act of parliament, were ordered to be let to such of the burgesses as were willing to take them; and it was further ordered, that certain annual sums out of the rents arising from the inclosure should be paid and distributed yearly among the twelve senior burgesses residing within the borough. It was decided (*i*) that an action of *debt* was maintainable on this bye-law at common law by the parties to whom pecuniary benefits were granted thereby; and that such action lay against the corporation at large, under the 2nd section of the Municipal Corporation Act (*k*).

A corporation aggregate is, generally speaking, not liable to be sued in tort, for any tortious act of their own; thus *trespass*, or *replevin*, or *trover* will not lie against them for such an act (*l*), but they are liable to be so sued for the tortious act of their agent, though not appointed under seal, if such an act be an ordinary service, such as a distress, professedly made under a statute, for a debt due to the corporation; and a jury may infer the agency from the adoption of the act by the corporation, as from their having received the proceeds of the seizure (*m*).

So *trover* will lie against a corporation for a tortious conversion by their agent; and, if it should be essential to the conversion that they should have authorized it under seal, such authority will be presumed after verdict (*n*).

(*h*) *R. v. Stamford (Mayor, &c.)*, 6 Q. B. 433. *X 53 m R 49*

(*i*) *Hopkins v. Swansea (Mayor, &c.)*, 4 M. & W. 621; S. C. in error, 8 M. & W. 901.

(*k*) App., p. v.

(*l*) See 8 Ea. 229, and cases there cited.

(*m*) *Smith v. Birmingham Gas Company*, 1 A. & E. 526. See also *Maud v. Monmouth Canal Company*, 4 M. & G. 452; 5 Scott, N. R. 457. *Green v. London General Omnibus Company*, 29 L. J.; C. P. 13.

(*n*) *Farborough v. Bank of England*, 16 Ea. 6. See also *Duncan v. Surrey Canal Proprietors*, 3 Stark. R. 50.

It seems doubtful whether *ejectment* can be maintained against a corporation. If they are tenants to any party, such tenancy may be determined by a notice to them to quit, served on their officers: after which the owner of the premises may distrain the cattle of any persons found trespassing on his grounds, or he may bring his action against them, or he may maintain ejectment against any person in the actual possession of the premises (a).

At any rate, a corporation will not be let in to defend an ejectment, without entering into the usual consent rule to confess themselves in possession; the object of that rule being merely to prevent the necessity of proving the identity of the premises at the trial (b).

*Ejectment* cannot be maintained against the bailiffs, *pro tempore*, of a corporation, by merely proving payment of rent for the premises by the annual predecessors of the defendants in the same office for several years before, and service of the notice to quit on the defendants, the existing bailiffs; for the payment of such rent by the bailiffs in succession is merely evidence of a tenancy in the corporation (b).

An action on the *case* also may be supported against a corporation by any individual who may have sustained a direct and particular damage by reason of the neglect of any public duties which by law may be thrown upon them, such as for the non-repair of highways, bridges or gaols (c).

They may also become liable in damages for the improper and careless construction, and management of dangerous premises or machinery (d); or for an assault and battery or false imprisonment committed by their servants in the exercise of the orders of the corporation, or in the discharge of their ordinary duty; or for the negligence and unskilfulness of their servants in the execution of the ordinary work and business of the corporation (e), without proof of any authority

(a) *Doe d. Carlisle (Earl)*, v. *Woodman* 8 Ea. 228.

(b) *Doe d. Parr v. Roe*, 1 Q. B. 700.

(c) *Lyme Regis (Mayor, &c.)*, v. *Henley*, 3 B. & Ad. 77; S. C. Bing. 91; *Lynn v. Turner*, Cowp. 86.

(d) *Cowley v. Sunderland (Mayor, &c.)*, 3 L. J. Exch. 127.

(e) *Scott v. Manchester (Mayor, &c.)*, 1 H. & N. 59; 2 H. & N. 204.

under seal (*f*). But it is otherwise where the servant is not acting under orders nor within the general scope of his authority (*g*). And a corporation, who have employed a solicitor to conduct legal proceedings, are not necessarily liable for unlawful acts of which the solicitor may have been guilty in the conduct of the proceedings (*h*), or for a misfeasance, thus an indictment will lie against an incorporated railway company for obstructing a highway by their works (*i*). In such cases an indictment is maintainable against the corporation, in its corporate name (*k*).

An *indictment* also will lie against a corporation, in the same manner as against the inhabitants of a county or parish, for such neglect of public duties (*k*).

A *criminal information* also will lie for a breach of duty and trust, as for applying to private purposes the revenues which are vested in them for public uses (*l*).

It may not be out of place here to remark that the members of the governing body are considered for some purposes as the agents of the corporation: and if they exercise their functions for the purpose of injuring its interests and alienating its property, they are personally liable for any loss occasioned thereby. And where such a liability arises from the wrongful act of

(*f*) *Eastern Counties Railway Company v. Broom*, 6 Exch. 314. See also *Goff v. Great Northern Railway Company*, 30 L. J., Q. B. 148; *Chilton v. London and Croydon Railway Company*, 16 M. & W. 231; *Tollemache v. London and South Western Railway Company*, 26 L. T. R. 222.

(*g*) See *Poulton v. London and South Western Railway Company*, L. R. 2 Q. B. 534.

(*h*) *Eggington v. Lichfield (Mayor, &c.)*, 5 El. & B. 112. As to the liability of a corporation for a malicious prosecution, see *Stevens v. Midland Counties Railway Company*, 10 Exch. 352; or for a libel, see *Whitfield v. South Eastern Railway Company*, El. Bl. & El. 121; 27 L. J., Q. B. 229.

(*i*) *R. v. Great North of England Railway Company*, *ut supra*.

(*k*) See *Dogherty's Crown Circ. Comp.* 398; see also, *R. v. Birmingham and Gloucester Railway Company*, 3 Q. B. 223; S. C., 2 C. & P. 478; *R. v. Great North of England Railway Company*, 9 Q. B. 315.

(*l*) *Limerick (Chamberlain, &c.), v. Attorney-General*, 6 Dow. 136; see also *Drummer v. Chippenham (Corp.)*, 14 Ves. 250.

several parties, each is liable for all the consequences, there being no contribution between them, and each case is distinct, depending upon the evidence against each party (a).

## SECTION 6.

### *Of the succession of the Members of a Corporation.*

The last incident to be mentioned which is peculiar to a corporation is the perpetual succession of its members, so that however the members may fluctuate, the corporate body never ceases to exist.

The property of the corporation does not belong to the individual members, but to the whole body aggregate, in like manner as we have seen that actions must be brought by and against the whole body, and not by or against any individual members.

The manner in which the various members of a municipal corporation are constituted, will now be discussed.

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(a) *Attorney-General v. Wilson*, 1 Cr. & Ph. 1.

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## CHAPTER IV.

### *Of the Members of a Municipal Corporation.—Reserved Rights of Freemen.*

As, before the passing of the Municipal Corporation Act, the corporate titles varied in different corporations, so in like manner there was a difference in the constituent portions of each corporation.

But there was in each corporation a governing body, usually known as the mayor and aldermen or bailiffs, and the general body usually styled the burgesses, or citizens, or commonalty; and such last named persons were generally known as the freemen.

The manner in which the members of the governing body were elected, also differed in different corporations. In by far the greater number, however, these bodies were constituted under the system of what is called self-election; that is to say, the members themselves elected others to supply vacancies as they occurred, whether from the expiration of the period for the service of office, from deaths, or resignations, or any other cause. In very few instances had the freemen or burgesses any voice in the election of the governing body.

Into the abuses of this system, which it was one of the main objects of the Municipal Corporation Act to remedy, it is no part of the present work to enter.

It may be observed, however, that this corporate body, even inclusive of the freemen, was in almost all instances very limited in number, as compared with the mass of the inhabitants, and that in most places all identity of interest between the corporation and the inhabitants had wholly disappeared. And yet in the corporation were vested extensive powers greatly

affecting the public interests, such as the control of the police, the management of the paving and lighting of the borough, and such matters; and they were also possessed of funds, in some cases to a very considerable amount, intrusted to them for public purposes, but over the distribution of which there was no efficient check or control.

The principal objects of the Municipal Corporation Act were to do away with this state of things; to render the powers and property vested in the corporation available for the general purposes of the borough, and to give the inhabitants at large an interest and control in the management of the corporate affairs, by rendering the governing body in some measure dependent on and responsible to them.

With this view the basis of the corporate structure was considerably extended. All the inhabitant householders of the borough, with certain qualifications, have been invested with a certain control over the municipal affairs; the governing body is now selected by the suffrages of the burgesses, as such householders are termed; and some express regulations have been made by the legislature as to the management and disposition of the corporate funds: at the same time that certain vested rights formerly belonging to the freemen were still preserved to them.

It is proposed in the first place, to deal with this last-named subject; and then to proceed to the consideration of the respective qualifications of the electors and of the officers; to treat of the election of the latter, their duties and liabilities, the duration of their office, and how they may be removed therefrom, and to point out the manner in which the corporate funds are to be disposed of.

The 2nd section of the Municipal Corporation Act (*a*), after reciting that in divers cities, towns and boroughs the rents and profits of the common lands and public stock thereof have been held and applied for the particular benefit of the citizens, freemen and burgesses, or of their widows or kindred, and have not

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(*a*) *Post*, App., p. v.



been applied to public purposes, enacts, that every person who now is, or hereafter may be, an *inhabitant* of a borough; and also every person who has been admitted, or who might hereafter, if the Act had not been passed, have been admitted a *freeman* or *burgess* of a borough, or who now is, or hereafter may be the wife, or widow, or son, or daughter of any freeman or burgess, or who may have espoused, or may hereafter espouse the daughter or widow of any freeman or burgess, or who has been, or may hereafter be bound an apprentice, shall have and enjoy the same share and benefit of the lands, &c., and rents and profits thereof, and of the common lands and public stock, of the borough, or corporation, and of any corporate property, real or personal, held in trust for charitable purposes, as fully and effectually as if the Act had not been passed.

But the total amount to be divided amongst the persons whose rights are reserved, is not to exceed the surplus remaining after payment of the interest of all debts chargeable upon the real or personal estate out of which the sums to be divided have arisen, together with the salaries of municipal officers, and all other lawful expenses which on the 5th of June, 1835, were chargeable upon the same.

The Act also does not apply to any claim or right of any burgesses or freemen or other person to discharge or exemption from tolls or dues levied to the use of the corporation; and no person thenceforward shall be entitled to be discharged or exempt from such tolls or dues (*b*), except in the case of existing freemen, their wives and children, as before. And where any fine or fee was formerly payable to the corporation in consideration of the freedom or of the title to such reserved rights, no person will be entitled thereto without payment of such fine or fee, which is to be paid to the treasurer of the borough; and such person must fulfil every condition which before the Act was a condition precedent to the enjoyment of

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(*b*) As to the exemption from tolls, see further 6 & 7 Will. 4, c. 104, s. 9, *post*, App., p. lxxiv, which provides that nothing in the second section of the Municipal Corporation Act shall alter or affect the exemption from tolls enjoyed by persons in virtue of *other* than corporate rights. And see *R. v. Frost*, 8 A. & E. 822.

such rights, so far as the same is capable of being fulfilled according to the provisions of the Act.

And by sect. 3 (*a*), no person thenceforward shall be admitted a burgess or freeman by gift or purchase.

The effect of these sections is to reserve all existing rights of property and all immunities to such persons as on the 9th of September, 1835 (the time of the passing of the Act), had a good inchoate title to them; or to such, except freemen by gift or purchase, as might after that date have obtained a title if the Act had not been passed. And they make it obligatory on the corporation to continue to render to such persons the benefits to which they were entitled before, subject, indeed, to anything which before would have defeated the bye-law or custom under which they were enjoyed (*b*). At the same time the freemen, who were formerly an integral part of the corporation, are now entirely detached from the body corporate (*c*).

## SECTION 1.

### *Of Inhabitants.*

In some boroughs it was necessary that a person, in order to be entitled to his freedom, should be an *inhabitant* of, or a *resident* in, the borough.

The term "inhabitant" will receive a different construction according to the subject in connection with which it is used.

Where, for instance, the object of a statute is to impose a pecuniary burden upon the *inhabitants* of a particular place or district, the term will include persons who *occupy* lands or tenements therein, even though they may not reside there (*d*).

(*a*) *Post*, App., p. vi.

(*b*) *I*de per *Parke, B.*, in *Hopkins v. Swansea (Mayor, &c.)*, 4 M & W. 643.

(*c*) Per *Cockburn, C. J.*, in *Lincoln (Mayor, &c.)*, App., and *Holmes Common (Overseers)*, Resp., 2 L. R. Q. B. 482, 489.

(*d*) 2 Inst. 122; *R. v. Adlard*, 4 B. & C. 772; *Attorney-General v. Foster*, 10 Ves. 335.

But where the object of the law is either to impose a personal duty, such as the doing suit to the court leet; or to confer a personal franchise, such as corporate rights, upon the inhabitants of any place, a *residence* therein is required in order to satisfy the term (e).

The term *resident* is in older authorities variously described, as *resiant*, *commorant*, or *conversant*; and a person is taken to be *conversant* where his bed is (f).

It would seem, however, that mere *residence* is not sufficient to satisfy the meaning of the term *inhabitant*, as otherwise a lodger, or tenant of a room, might be said to be an inhabitant of the place where he resides; but that it is necessary that a person should be a *householder*, paying scot and lot; that is contributing to the local rates and taxes (g). And in this sense the term *inhabitant* is synonymous with that of *inhabitant householder*.

A person, however, will still be considered an inhabitant, though he does not personally occupy the whole of his house, but lets a portion of it to lodgers (h).

And it is not necessary that a party should continually reside in the house in order to be an inhabitant; he may be an inhabitant or resident in more than one place; it is sufficient if he retain a residence to which he may return at pleasure, and have the *bonâ fide* intention of so returning (i).

Thus where a party having prior connexions with a borough town previous to his election to a corporate office, for which residence was a necessary qualification, took a house for four years, but afterwards, at his landlord's request, for one, and

(e) 2 Inst. *ut supra*; *Griesley's case*, 8 Rep. 76; Hawk. P. C. B. 2, c. 10, s. 12; *R. v. Jones*, 8 East, 451; *R. v. Adlard*, *ut supra*; *R. v. Nicholson*, 12 East, 342. See also *R. v. Mashiter*, 6 A. & E. 153; *R. v. Davie*, *Id.* 374.

(f) 2 Inst. *ut supra*.

(g) *R. v. Mallett*, 2 Barnard. 408. See also *R. v. Head*, 4 Burr. 21, 25; *Hoblyn v. Regem*, Bro. P. C. 520.

(h) *R. v. Scolden*, Barnard. 439; *R. v. Mitchell*, 10 East, 511; see also the election cases of *Wootton Bassett*, Rog. on El. 162; *Brett's case*, *Milbourne Port*, Corb. & Dan. 217.

(i) *Ibid.*, and see the *Winchelsea case*, Glanv. 17.

slept there one night before the election, and did not return again for near a month afterwards, when he stayed two days, but retained possession of his house under his lease the whole time ; the taking of the house appearing to the court to be *bonâ fide*, this was held to be a sufficient legal residence (a).

Where a charter of incorporation directed that certain officers should be elected out of the burgesses and inhabitants, a usage to elect non-inhabitant burgesses was held to be void (b).

## SECTION 2.

### *Of the Freemen or Burgesses.*

It has been seen that the freemen or burgesses formed a necessary part of the corporate body, though before the Municipal Corporation Act, they had seldom any active share in the management of the corporate affairs.

Each borough had its own peculiar customs and bye-laws regulating the admission of freemen (c). The right to freedom generally depended upon either *birth, marriage, servitude, gift, or purchase*.

It has been already noticed that by the 2nd section of the Municipal Corporation Act (d), all rights of property and certain beneficial exemptions are reserved to those persons who at the time of the passing of the Act were freemen or burgesses, or who might thereafter become so, and their respective wives and daughters ; but by the 3rd section (e) no person is, after the passing of the Act, to be admitted a burgess or freeman by *gift or purchase*.

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(a) *R. v. Sargent*, 5 T. R. 466.

(b) *R. v. Salway*, 9 B. & C. 424.

(c) See *R. v. Marshall*, 2 T. R. 2 ; *R. v. Powell*, 8 T. R. 639 ; see also the *Maldon case*, F. & F. 658. No usage will avail to alter the positive provisions of a charter, *Helston case*, 2 Doug. 5 ; *Derby case*, 3 Doug. 287, 304. See also *R. v. Salway*, 9 B. & C. 424.

(d) See *ante*, p. 38.

(e) See *ante*, p. 39.

It becomes, therefore, unnecessary to consider these two last classes of freemen.

*a. Of Freemen by Birth and Marriage.*

It will not be necessary either to make many observations on these subjects. A person to be entitled to freedom in respect of birth must be proved to be the legitimate son of a freeman.

The legitimacy, age, and identity of the person claiming the freedom may be shown in the usual way.

The right to freedom in respect of marriage depends on the local customs of each borough; in some a party is entitled to the freedom who has married the daughter or the widow of a freeman.

The marriage would be proved in the ordinary way.

*b. Of Freedom by Servitude.*

A person in order to be entitled to his freedom in respect of servitude, must have been bound apprentice to a freeman, and have served as such apprentice for the whole period for which he was so bound.

The requisite period of servitude may vary in different boroughs.

It is necessary that the binding should be by deed, but such deed need not be indented (*f*); though it is usually termed an *indenture* of apprenticeship.

A service under an agreement to execute an indenture would not be sufficient (*g*).

The execution of the deed may be shown in the ordinary way. It must be duly stamped (*h*) and sealed (*i*).

The parties to the deed must be competent to contract, but a

(*f*) 31 Geo. 2, c. 11.

(*g*) *R. v. Stratton*, Burr. Set. Ca. 72.

(*h*) See 33 & 34 Vict. c. 97, Schéd.

(*i*) See Com. Dig. tit. *Fait*.

minor may bind himself even without the joinder of his parent, it being an act for his own benefit; but a father cannot bind his son without the assent of the latter, testified by the execution of the indenture; a service under the indenture is not tantamount to execution (a).

There must be a continuance of the binding and also of the service, under the deed during the whole period for which the apprentice was bound (b); but if the master were to die or become bankrupt, it seems that a service under an assignment to a third party being a freeman would be sufficient (c).

It is necessary that the relation of master and apprentice should exist between the parties; that of master and servant will not be sufficient; there must be a contract to teach on the part of the master, and to learn on that of the apprentice, in order to constitute the former (d).

If, as in the case of some boroughs, the charter or custom requires the apprenticeship to be with a resident freeman, a binding to a freeman who is only occasionally resident in the town, and where the service is to be performed out of the borough, is not sufficient (e); but it seems that a service at some place out of the borough, if the trade carried on there is subservient to the trade carried on by the master in the borough is sufficient (f).

It has been decided that service under articles of clerkship to an attorney is not a sufficient compliance with a custom requiring service of an apprenticeship to a burgess carrying on *trade* within the borough (g).

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(a) *Chesterfield's case*, 2 Salk. 479; *R. v. Arnesby*, 3 B. & A. 584; *R. v. Cromford*, 8 East, 25.

(b) *R. v. Inman*, 4 B. & A. 57; *R. v. Rowe*, 4 Burr. 2287; *R. v. St. Paul's, Bedford*, 6 T. R. 452; *R. v. E. Bridgford*, Burr. S. C. 133; *R. v. Slythe*, 6 B. & C. 246. See also *R. v. Linkinborn*, 3 B. & Ad. 413; *R. v. Banbury*, *Id.* 706; *R. v. Drimerchion*, *Id.* 120.

(c) See *R. v. Stachland*, 1 Doug. 70; *P. v. Shepton*, 2 Bott. 295.

(d) As to the distinction between servitude as apprentice and as servant, see *R. v. Crediton*, 1 B. & Ad. 497; *R. v. Tipton*, 9 B. & C. 891; *R. v. Edingale*, 10 B. & C. 741. See also *R. v. Mountsorrell*, 2 M. & S. 460.

(e) *R. v. Marshall*, 2 T. R. 2.

(f) *R. v. Cambridge*, 2 Chit. R. 144.

(g) *R. v. Doncaster*, 7 B. & C. 630.

This may be a convenient place to notice some decisions that have taken place with reference to bye-laws relating to the subject of apprenticeship.

A bye-law directing that a sum of money should be paid for the use of a corporation on enrolling indentures of apprenticeship to one of its member has been held to be bad (*h*). So with regard to a bye-law made by a *company* in a corporation to restrain the number of apprentices to be taken by any of the members (*i*).

Where by custom a prescriptive right was claimed of making bye-laws to regulate the number of persons to be taken as apprentices by members of a corporation, such custom will not warrant a bye-law altering the qualification of persons to be taken as apprentices (*k*).

### SECTION 3.

#### *Of the Parliamentary Franchise.*

The Parliamentary Reform Act (*l*) preserved to all persons who at the time of the passing that Act were, or who thereafter might become freemen or burgesses, the right of voting in the election of members of parliament, subject to certain conditions and provisions; and the 4th section of the Municipal Corporation Act (*m*) enacts, that any person who, if that Act had not been passed, would have enjoyed as a burgess or freeman, or might, after the passing of the last mentioned Act, have acquired *in respect of birth or servitude*, as a burgess or freeman, the right of voting in such elections, shall be entitled to enjoy or acquire such right as fully as if that Act had not been passed.

The conditions and provisions contained in the general Reform Act, are as follows (*n*):

(*h*) *Nevesly v. Webster*, 1 Ld. Ken. 243.

(*i*) *R. v. Cooper's Co., of Newcastle-upon-Tyne*, 7 T. R. 543.

(*k*) *R. v. Tappenden*, 3 East, 186. See *R. v. Bird*, 13 Ea. 267.

(*l*) 2 Will. 4, c. 45.

(*m*) *Post*, App., p. vi.

(*n*) 2 & 3 Will. 4, c. 45, s. 32 enacts, "that every person who would have been entitled to vote in the election of a member or members to serve in

A freeman or burgess to be entitled to vote at the election of members of parliament,—

1. Must be duly qualified to vote on the last day of July, as if such were the day of election, and that Act had not passed.

2. He must have resided for six calendar months previous to that day within the city or borough, or within seven miles from the polling place therein.

By the Parliamentary Registration Act (6 Vict. c. 18, s. 76), the distance is to be measured in a straight line; and according to the ordnance map, if there is one relating to the neighbourhood.

3. If a freeman or burgess otherwise than by birth or servitude, he must have been so admitted before the 1st March, 1831.

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any future parliament for any city or borough not included in the schedule marked (A) to this Act annexed, either as a burgess or freeman, or in the city of London as a freeman and liveryman, if this Act had not been passed, shall be entitled to vote in such election, provided such person shall be duly registered according to the provisions hereinafter contained; but that no such person shall be so registered in any year, unless he shall, on the last day of July in such year, be qualified in such manner as would entitle him then to vote if such day were the day of election, and this Act had not been passed; nor unless, where he shall be a burgess or freeman, or freeman and liveryman of any city or borough, he shall have resided for six calendar months next previous to the last day of July in such year within such city or borough, or within seven statute miles from the place where the poll for such city or borough shall heretofore have been taken; nor unless, where he shall be a burgess or freeman of any place sharing in the election for any city or borough, he shall have resided for six calendar months next previous to the last day of July in such year, within such respective place so sharing as aforesaid, or within seven statute miles of the place mentioned in conjunction with such respective place so sharing as aforesaid, and named in the second column of the schedule marked (E. 2) to this Act annexed: provided always, that no person who shall have been elected, made, or admitted a burgess or freeman since the 1st day of March, 1831, otherwise than in respect of birth or servitude, or who shall hereafter be elected, made or admitted a burgess or freeman, otherwise than in respect of birth or servitude, shall be entitled to vote as such in any such election for any city or borough as aforesaid, or to be so registered as aforesaid: provided also, that no person shall be so entitled as a burgess or freeman in respect of birth unless his right be originally derived from or through some person who was a burgess or freeman, or entitled to be admitted a burgess or freeman, previously to the 1st day of March, 1831, or from or through some person who since that time shall have become or shall hereafter become a burgess or freeman in respect of servitude."



4. If entitled by birth his right must originally be derived from some person who was either actually a freeman (*a*), or entitled to be admitted as such, before that date, or from some one who since that time shall become a freeman in respect of servitude.

5. He must be duly registered.

The machinery as to registration, which was originally regulated by the Reform Act (*b*), is now fixed by the 6 & 7 Vict. c. 18 (*c*), and is as follows:—

By sect. 13 of that Act the overseers of every parish or township are, on or before the last day of July, to prepare an alphabetical list (*d*) of all persons entitled to vote for members of parliament for the borough in respect of the occupation of premises of the yearly value of £10; and another list (*e*) of all other persons (except freemen) entitled to vote by virtue of any other right; and are to sign the lists, and have copies printed and published (*f*) on or before the 1st of August. Copies of the lists are also to be kept for inspection and sale.

By sect. 14, the town clerk at the same time is to prepare a list (*g*) of the freemen entitled to vote, and is to sign and publish (*h*) such list as above. Copies of this list are also to be kept for inspection and sale.

By sect. 15, any person omitted from such lists, and claiming to be inserted therein is, on or before the 25th of August, to give a notice to the overseers (*i*) or to the town clerk (*k*) respectively; and they are to make out a list of such claimants (*l*).

(*a*) See *Gaydon v. Bencraft*, 18 C. B. (N.S.) 11.

(*b*) 2 & 3 Will. 4, c. 45.

(*c*) "An Act to amend the Law for the registration of persons entitled to vote, and to define certain rights of voting, and to regulate certain proceedings in the election of members to serve in parliament for *England* and *Wales*."

(*d*) Form given in sched. B., No. 3.

(*e*) *Id.* No. 4.

(*f*) As to the method of publication, see sec. 23, *post*, p. 48.

(*g*) *Id.* No. 5.

(*h*) See sec. 24, *post*, p. 48.

(*i*) *Id.* No. 6.

(*k*) *Id.* No. 7.

(*l*) *Id.* Nos. 8, 9. Sec. 16 provides that registered electors and claimants may inspect the rate books.

By sect. 17, any person named in any list may object to any other person as not being entitled to be on any list; and the objector is, on or before the 25th of August, to give a signed notice (*a*) to the overseer or town clerk respectively; and also to the person objected to (*b*), by leaving the same at his place of abode.

By sect. 18 lists of persons objected to are to be made out by the overseers (*c*) and town clerk (*d*) respectively, who are to publish such list and the lists of claimants on or before the 1st of September.

By sect. 19 the overseers are, on or before the 29th of August, to deliver to the town clerk copies of their lists of voters, claimants, and persons objected to.

By sec's. 23, 24, the publication of lists by the overseers is to be by fixing a copy on the doors of every public church or chapel in their parish; and that by the town clerk, on the town hall, or in some other conspicuous place; and the lists must be continued so affixed for a period including two consecutive Sundays at least from the day of publication (*e*).

Sect. 26 enacts that lists are not to be invalidated by imperfect publication. Sect. 27 provides, that if no list of voters is made out or published, the register of voters for the former year is to be in force.

By sect. 33 the revising barrister (appointed under sect. 28 by the Lord Chief Justice in the metropolitan boroughs, and by the senior judge going the summer circuits as to all other boroughs) (*f*) is to hold an open court between the 15th of September and the last day of October, having given at least

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(*a*) Sched. B., No. 10.

(*b*) *Id.* No. 11.

(*c*) Sched. B., No. 12.

(*d*) *Id.* No. 13.

(*e*) Sec. 25 imposes a penalty for destroying, mutilating, effacing, or removing any lists.

(*f*) See sec. 29 as to the appointment of additional barristers. By sec. 31 the barrister is to notify his appointment to the town clerk, who is to transmit to him abstracts and lists.

seven days' notice to the town clerk of the time and place of holding the court; whereof the town clerk is to publish notice.

By sect. 35 the town clerk and overseers are to attend at the first court, and to deliver to the barrister their lists and notices of claim and of objection (*g*).

By sect. 48 the barrister is to deliver to the town clerk the lists of voters for the borough, corrected and signed by him (*h*); the town clerk is to copy the lists into a book, and on or before the 1st of November is to sign and deliver the same to the returning officer. And this book constitutes the register of voters for one year (*i*).

It would be foreign to the purposes of this work to treat more at length of this subject.

#### SECTION 4.

##### *Of the Freemen's Roll.*

Besides the list of freemen required to be made out by the town clerk for the purposes of the parliamentary franchise, the town clerk for the time being is required, by the 5th section of the Municipal Corporation Act (*k*), to make out a list by the 1st of December, 1835, of all persons, who on the 9th of September in that year, had been admitted as burgesses or freemen of the borough, such list to be called "The Freemen's Roll;" and whenever any person shall after that time become entitled, and claim to be admitted a burgess or freeman "for the purposes aforesaid" in respect of birth, servitude or *marriage*, the mayor shall examine into such claim, and upon its being established, the claimant shall be admitted, and enrolled

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(*g*) See secs. 38 to 46 as to the power of the barrister to insert or expunge names from the lists, and to make other corrections, and as to appeals, &c.

(*h*) See sec. 41.

(*i*) Sec. 49.

(*k*) *Post*, App., p. vii.

by the town clerk upon the freemen's roll. The town clerk is also required to keep a copy of the roll, to be perused by any person without fee, at all reasonable times; and he is also to deliver a copy to any person requiring the same, upon payment of a reasonable price.

There does not appear to be any time limited for making the claims for admission (a).

The "Freemen's Roll" appears to be intended as a substitution for the "Corporation Book" formerly used for the entry of admissions (b).

It is to be observed that the 5th section of the Municipal Corporation Act speaks of persons entitled to be admitted *for the purposes aforesaid*, in respect of birth, servitude or marriage. The immediately preceding section refers to the parliamentary franchise, to which no freeman will be entitled in respect of marriage, who was not so entitled before the 1st of March, 1831 (c). The 5th section, therefore, must probably be taken to refer to the "purposes" mentioned in the 2nd section of the Municipal Corporation Act (d), as to the reservation of certain rights of property, and beneficial exemptions.

By the 22nd section, which will be noticed more fully hereafter, no stamp duty is payable for the admission, registry, or enrolment of any *burgess* according to the provisions of the Act. This provision, however, does not apply to the admission of freemen.

By the 1 & 2 Vict. c. 35 (e), the stamp duty on the admission of freemen, in respect of *birth* or *servitude*, in any borough returning a member to parliament, is abolished.

The statute does not fix what are to be considered "reasonable hours" for a perusal of the roll, or "a reasonable price" for a copy. But an illustration of the meaning to be put upon these expressions may be drawn from the 32 Geo. 3, c. 58, s. 4, which directs the mayor and other officers of corporations to allow any member of such corporation, on demand, to inspect

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(a) See *The Okehampton Case*, 1 Fraser, 166.

(b) See *Worcester*, 3 Doug. 249; *Cardigan*, *Id.* 190.

(c) 2 Will. 4, c. 45, s. 32, *supra*, p. 46.

(d) 5 & 6 Will. 4, c. 76, s. 2, App., p. v.

(e) *Post*, App., p. xcv. See 33 & 34 Vict. c. 97. Sched., tit. *Admission*.

all books and papers relating to the admission and swearing in of freemen, *between the hours of nine and three*; and to have copies of entries, on payment of 6*d.* for every hundred words.

The Court of Queen's Bench formerly exercised an immediate authority over the admission of freemen (*f*). The appointment of the mayor to decide upon such claims, though it has created a new jurisdiction, has not, it would seem, ousted that of the superior tribunal, though the latter would now be exercised in the nature of an appellate jurisdiction.

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(*f*) See *Cates v. Knight*, 3 T. R. 442; *Exp. Love*, 1 Deac. & Chit. 31; *Exp. Benson*, *Id.* 324, 329, 339.

## CHAPTER V.

### *Of the Municipal Boundaries.*

Before proceeding to discuss the new qualification of burgesses created by the Municipal Corporation Act, it will be expedient to consider some of the provisions introduced by that statute for the purpose of limiting and explaining such qualification.

By the 7th section of that Act (*a*), the various boroughs in England and Wales named in the schedules (A) and (B), were divided into two classes.

1. Boroughs, named in schedule (A), having a commission of the peace.

2. Boroughs, named in schedule (B), not having a commission of the peace, except on petition and grant.

Each of these divisions was again subdivided into :

1. Boroughs retaining their parliamentary boundaries, as settled by the 2 & 3 Will. 4, c. 64.

2. Boroughs retaining their original or municipal boundaries.

And the same section provided that no parish or place, detached from the main part of any borough, should, after the passing of the Act, be included within any such borough ; but that, subject to these provisions, the metes and bounds of every such borough should include the whole of the liberties of such borough, by land and by water, as the same were taken to be.

The effect of this clause was to make such liberties parcel of the borough for certain purposes, while they remained distinct for others. Among other matters these liberties had no share in the return of members of parliament, not being within the parliamentary boundaries ; and questions were frequently arising as to the proper proportion to be borne by each in defraying the public expenses of the borough.

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(*a*) App., p. vii.

In order to obviate these difficulties, the 6 & 7 Will. 4, c. 103 was passed, by the 1st section of which (b) that portion of the 7th section of the Municipal Corporation Act which has just been adverted to was repealed, and it was enacted, that notwithstanding any thing in the said Act contained, no part of any county or of the liberties of any borough, &c., named in the 1st section of the schedules (A) and (B) (*i.e.* of any borough having the parliamentary boundaries as recited by 2 & 3 Will. 4, c. 64), should be taken to be within the metes and bounds of any such borough, unless such liberty, &c., was, before the the passing of the Municipal Corporation Act, parcel of the borough; or unless it was within the parliamentary boundaries, and had a voice in the election of members.

And it was further enacted as to the boroughs named in the 2nd section of the schedules (A) and (B) (*i.e.* boroughs retaining their original municipal boundaries) that no part of any county or of any liberty, &c., should, for the purpose of the Municipal Corporation Act, be taken to be within the metes and bounds of any such borough, &c., unless such liberty, &c., should have been part of such borough, at the time of the passing of the Boundary Act; but that such places, until parliament otherwise directed, should be taken to be within, and to be subject to the same jurisdiction as the county, riding, &c., wherein such part was situate, or with which it had the longest common boundary (c).

The general effect of these enactments is to exclude the inhabitants of such liberties from voting at municipal elections, and also to exempt them from the payment of municipal taxes imposed by the Municipal Corporation Act (d).

But where debts have been incurred prior to the passing of the Municipal Act in respect of such places, in common with other parts of the borough, it is enacted, that for that portion of the debt for which such places are liable, the provisions of the Municipal Corporation Act are still to remain in force, and

(b) *Post*, App. p. lxx.

(c) See *Beardsworth v. Torkington*, 1 Q. B. 782; *Hopkins v. Swansea Mayor, &c.*, 4. M. & W. 640.

(d) See *Coventry (Mayor, &c.) v. Lytham*, 10 M. & W. 773.

that in such cases the separation from the old borough is not to operate as a discharge from any liability to which the ratepayers within the liberty were subject.

And it is also provided, that the Act is not to have any retrospective effect to invalidate the election of any municipal officer, or any proceeding in any borough, since the 25th December, 1835 (*a*).

By the 8th section of the Municipal Corporation Act (*b*) it is enacted, that every place included within the bounds of a borough shall be part of such borough (*c*), and the parts cut off from the borough are declared to be part of the adjoining county, or, where it abuts upon two counties, to be part of that with which it has the longest common boundary (*d*).

This section contains a similar provision as to debts incurred by the portions cut off from the borough, with that contained in the 1st section of the 6 & 7 Will. 4, c. 103, above referred to.

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(*a*) See 7 Will. 4, and 1 Vict. c. 78, ss. 30, 31, *post* App., p. lxxxvi; see also 13 & 14 Vict. c. 91; App., p. cxxxii; 28 & 29 Vict. c. 126, s. 57; App., p. cxc.

(*b*) App., p. viii.

(*c*) See *Dorchester (Mayor)*, v. *Ensor*, L. R. 4 Exch. 335.

(*d*) See *R. v. Gloucestershire, (Justices)*, 4 A. & E. 689; *R. v. Hull (Recorder)*, 8 A. & E. 642; *R. v. Piller*, 7 C. & P. 337.

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## CHAPTER VI.

### *Of the New Qualification as Burgesses.*

The 9th section of the Municipal Corporation Act which prescribed the qualifications for being a burgess is repealed by 32 & 33 Vict. c. 55, s. 1 (*e*), and the qualifications required by the latter Act are as follows:—

1. To be of full age :

2. To have occupied, on the 31st of July in each year, for twelve calendar months preceding, a house, warehouse, counting-house, shop or other building, within the borough :

3. To have resided, during that period, within the borough, or within seven miles of it :

4. To have been rated in respect of the premises in his occupation to the poor rates of the parish where they are situated :

5. To have paid, on or before the 20th of July in each year, all such rates and all borough rates as shall be payable by him in respect of the premises, up to the preceding 5th of January ; and

6. To be duly enrolled under the provisions of the Municipal Corporation Act and the Acts amending the same.

The same section provides that no person shall be “ enrolled ” (which must be taken to mean “ entitled to be enrolled ”) who

1. Is an alien ; or

2. Has within twelve calendar months before the 31st of July, received parochial relief, or other alms.

### SECTION 1.

#### *Of the Age, and herein of the Sex, of the Party.*

In the repealed section the words were “ every male person of full age, &c.,” the word “ male,” however, is omitted in the

32 & 33 Vict. c. 55, s. 1 (a), from which the intention of the legislature seemed manifest that women should be admitted to the municipal franchise; and to remove any doubt on the point it was enacted by sect. 9 of the last-mentioned statute that in that Act and the Municipal Corporation Act and the Acts amending the same wherever words occur which import the masculine gender, the same shall be held to include females (meaning, women) for all purposes connected with and having reference to the right to vote in the election of councillors, auditors, and assessors.

But this section does not enable married women to vote (b), as it removes only the disqualification by reason of *sex*, and leaves untouched the disqualification by reason of *status*; nor to the provision of the Married Woman's Property Act (33 & 34 Vict. c. 93), which enables them to hold property during coverture, at all affect the question (c).

The "full age" required by the Act is twenty-one years, which is completed on the day preceding the anniversary of a person's birth (d).

## SECTION 2.

### *Of the Nature of the Premises occupied.*

The premises mentioned in the 32 & 33 Vict. c. 55, s. 1, are a "house, warehouse, counting-house, shop, or other building."

The words "other building," which are contained in the 27th section of the Parliamentary Reform Act (e), were omitted in the Municipal Corporation Act (f), and consequently, under that Act, the occupier of various kinds of premises, who under the Reform Act were entitled to the parliamentary franchise, were not entitled to the municipal franchise as bur-

(a) App. p. ccvii.

(b) *R. v. Harrald*, L. R. 7 Q. B. 361.

(c) Per *Mellor*, J., *Ib.* p. 363.

(d) See 2 Bl. Com. 463.

(e) 2 Will. 4, c. 45; see also 30 & 31 Vict. c. 102, s. 3.

(f) 5 & 6 Will. 4, c. 76, s. 9.

gesses. This possibly unintentional distinction between the two franchises is now abolished.

It is to be observed, however, that while the Reform Act requires that the premises occupied by the voter should be of the yearly value of £10, there is no such requirement in the 32 & 33 Vict., so that the occupation of any of the enumerated premises, without reference to their value, confers the rights of a burgess.

It is proposed to consider the enumerated premises and the nature of their occupation *seriatim*. And first as to a house (*g*).

The meaning of the word "house" is not necessarily restricted to a dwelling-house; and a building therefore constructed as a dwelling-house will still be considered as a house, though it may be used for other purposes (*h*).

A building, the lower part of which is used as a cow-house or stable, and the upper part, consisting of a chamber, as a dwelling place, has also been considered to constitute a "house" (*i*).

It has been decided that a party residing in a house, for the whole of which he is rated, is entitled to be on the burgess roll as an occupier of a house, notwithstanding he lets a room in the house, at a yearly rent, to a person who does not sleep there (*k*).

And it would seem to make no difference if the person to whom the room was let did sleep there, as in such case he would only be considered as an inmate or lodger while the tenant of the house resided there, and the latter would in law be considered as in the occupation of the whole house (*l*).

(*g*) Most of the decisions referred to on this subject have been made in relation to the Parliamentary Reform Act, but the principles are equally applicable to cases under the Municipal Acts.

(*h*) See *Daniel, App., Coulsting, Resp.*, 7 M. & G. 122; Bar. & Arn. 380.

(*i*) See *Nunn, App., Denton, Resp.*, 7 M. & G. 66; Bar. & Arn. 324.

(*k*) *R. v. Eye (Mayor)*, *In re Neobard*, 9 A. & E. 670.

(*l*) See *Pitts, App., Smedley, Resp.*, 7 M. & G. 85, Bar. & Arn. 344; *Page, App., Perkins, Resp.*, 8 Scott N. R. 983; *Wansey, App., Perkins, Resp., Hill's Case*, 7 M. & G. 15; Bar. & Arn. 409; *Croucher, App., Lam-*

On the other hand, where different tenements are under the same roof, and open into a common passage and staircase, there being no outer door opening to the street, it has been held that the rated occupier of every such tenement was qualified as the occupier of a house (a). And indeed where a house is let out in separate portions, to different tenants, although there is an outer door, but which is common to all of them, if the landlord does not reside upon the premises, the portion that is in the occupation of such tenant is considered in law as his *house* (b).

And it seems that it will make no difference if the landlord occupies a portion of the house for the purposes of business, such as a shop, but does not reside on any part of the premises, even though he keep a servant resident on the premises to look after them, and for the accommodation of himself and the other occupiers (c).

But where the tenant and occupier of a house underlet a cellar which was beneath, and had an internal communication with the house; and the under-tenant used the cellar as a warehouse, and was separately rated for it: it was held that the

*beth*, Resp., 8 Scott N. R. 985. The decision in some of these cases partly turned upon the point that the occupier of the rooms could not be considered as occupying them "as owner or tenant," as required by the Reform Act.

(a) *R. v. Eye (Mayor, &c.)*, In re *Evans*, 9 A. & E. 679.

(b) See *R. v. Trapshaw*, 1 Lea. C. C. 427, 4th Ed.; *R. v. Carroll*, *Id.* 680; *R. v. Bailey* 1 Moo. C. C. 23; by Littledale, J., in *R. v. Eye (Mayor)*, 9 A. & E. 680; *Score*, App., *Huggett*, Resp., 7 M. & G. 95, Bar. & Arn. 355. In the last cited case, Maule, J., intimated an opinion that premises of this nature might be described as "apartments" in the list of voters, treating them as falling under the general term of "building" in the 27th section of the Reform Act. There seems to be no doubt however, that in law each portion is properly designated as a "house." See also *Cook v. Humber*, 11 C. B. (N. S.) 33; *Wilson v. Roberts*, *Id.* 50.

(c) See *Downing*, App., *Luckett*, Resp., 5 C. B. 40. This case decided that the occupier of a room as a counting-house, under such circumstances was entitled to be registered as the occupier of a "counting-house" under the Reform Act. In *Toms*, App., *Luckett*, Resp., *Id.* 23, it was held (*dissentiente* Williams, J.), that a person who had the exclusive occupation of apartments in a house, at a rent, having a key of the outer door, and free and uncontested access thereto at all times, the landlord occupying a portion of the premises, but not residing therein, was entitled to be registered under that Act as tenant of a "building."

tenant could not qualify as a burgess for the house independently of the cellar (d).

Where A. entered into partnership by deed with B., who was the owner in fee of a house within the borough, in which house it was agreed that the business of bookselling should be jointly carried on by them ; B. to require no rent for the part of the house in which the business was carried on, and the fixtures in those parts to be joint property ; and A. and B. carried on business there accordingly, and were jointly rated for the house, A. residing elsewhere ; the court expressed an opinion that A. was an occupier, and entitled to be a burgess (e).

As to a *warehouse*. A warehouse may be defined to be a building used for storing or depositing wares or merchandizes.

Mr. Stephens (f) mentions a case that occurred during the registration of 1835, in which the question was, whether a mill-house could be considered as a warehouse. But the difficulty that arose in that case is now got rid of, as a mill-house would certainly come under the definition of a " building."

As to a *counting-house*. A " counting-house" may be defined to be a building where accounts are transacted ; and in common parlance it is understood to mean a place of business where mercantile and commercial affairs are transacted. Under this term it was doubtful whether the offices of an attorney or solicitor were comprised (g). But there can be no doubt that such offices also would constitute a *building*.

As to a *shop*. A shop may be defined as a building where wares are exposed or kept for the purpose of sale.

As to a *building*. The term " building" is one of a very comprehensive character ; though as it is preceded by the word " other" it must, according to the usual rule as to the construction of statutes, be limited to a building of the same class

(d) *R. v. Eye (Mayor)*, In re *Ungless*, 9 A. & E. 677 ; and see *R. v. Sefton*, Russ. & R. 202.

(e) *R. v. Deighton*, Dav. & M. 682.

(f) Steph. on Mun. Corp. 71.

(g) See *Re Creek*, 3 B. & S. 459.

(*ejusdem generis*) as those previously enumerated. Thus it would include sheds (*a*), stables (*b*), rooms or floors in factories (*c*), kilns (*d*), and the like; or apartments in a house, where the landlord occupies a portion of the premises, but does not reside therein (*e*). And as has been seen it will also include a mill-house and offices (*f*).

As to the *occupation*. There is no provision in the 32 & 33 Vict. for the cases of joint occupiers of premises, as there is in the Parliamentary Reform Act (*g*); and doubts had been raised whether such parties are qualified as burgesses (*h*). Although, as was suggested in the former edition of this work, joint tenants are seised *per my et per tout*; and each is in law considered to be seised of the whole and every part of the property. And the opinion of Abbot, C. J. (*i*) was relied on that if such parties were not entitled, the effect would be to exclude persons engaged as partners in the most respectable branches of trade and commerce. And the point may now be considered as settled that a joint occupation is sufficient to entitle a person to be placed on the list of burgesses (*k*).

The period required by the Act for the occupation of the premises is the whole of the twelve calendar months preceding the last day of July in any year; but the premises need not be the same, or in the same parish (*l*).

By the 12th section of the Municipal Corporation Act (*m*)

(*a*) See *Watson, App., Cotton, Resp.*, 5 C. B. 51.

(*b*) *Whitmore, App., Wenlock, Resp.*, 7 Sc. N. R. 489; Bar. & Arn. 14.

(*c*) See *Wright, App., Stockport, Resp.*, 5 M. & G. 33, Bar. & Arn. 39.

(*d*) See *Lyme Regis; Genge's Case*, 1 Bar. & Aust. 486.

(*e*) See *Toms, App., Lockett, Resp.*, 5 C. B. 23.

(*f*) *Ante*, p. 59.

(*g*) 2 Will. 4, c. 45, s. 29, as to boroughs; and see 6 Vict. c. 18, s. 73, as to counties.

(*h*) See Alc. Reg. Ca. 2; Chitty's Statutes, 963; Rawlinson's Municipal Corporation Act, p. 17, 4th Ed.

(*i*) In giving the judgment of the court in *R. v. Hall*, 1 B. & C. 423; and see *R. v. Poynder, Id.* 178.

(*k*) Per Cur. (*Blackburn and Hannan, J.J.*), *R. v. Exeter (Mayor)*, *Dipstale's Case*, L. R. 4; Q. B. 114. This decision was under the repealed section (9) of 5 & 6 Will. 4, c. 76; but the words are in this respect the same as in section 1 of 32 & 33 Vict. c. 55.

(*l*) See the proviso as to rating (32 & 33 Vict. c. 55, s. 1).

(*m*) App., p. ix.

it is enacted, that where premises shall come to any person by descent, marriage, marriage settlement, devise or promotion to any benefice or office, the occupancy of the person from whom the occupancy shall come to him shall reckon as his own occupancy.

And by the 8th section of the 7 Will. 4, and 1 Vict. c. 78 (n), it is further enacted, that in such cases it shall not be necessary for the claimant to prove that he was an inhabitant householder within the required limits, or that he was an occupant or rated within the borough before the title of such property shall have devolved upon him.

### SECTION 3.

#### *Of the Residence of the Party.*

The 1st section of 32 & 33 Vict. c. 55 (o), also requires that the party, to be qualified as a burgess, must have resided within the borough, or within seven miles of it, during the time of his occupation of premises, *i.e.*, for twelve calendar months preceding the 31st of July in each year.

In the repealed section (9) of 5 & 6 Will. 4, c. 76, it was required that the party should have been "an inhabitant householder" within the borough, or within seven miles of it, for the three previous years. This gave rise to many questions as to what constituted a householder; but now mere residence is sufficient; and the requisite period of such residence is altered from three years to one.

The terms "resident" and "inhabitant" are equivalent or nearly so (p).

A merely colourable residence will not be sufficient (q). But a daily and constant residence is not necessary; if a party have a *bonâ fide* domicile in a place, in which his family or household

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(n) App., p. lxxxii.

(o) *Supra*, p. 56.

(p) See *R. Fryer*, cited in *R. v. N. Curry*, 4 B. & C. 960; see also per *Blackburn, J.* in *R. v. Exeter (Mayor)*, *Wescomb's Case*, L. R. 4, Q. B. 113.

(q) See *R. v. Richmond (Duke)*, 6 T. R. 560.

resides, and to which he has the *animus revertendi*, that is sufficient to constitute him a resident of that place (a).

Sleeping at a place has often been considered as a test of residence, but though this fact is generally a very important ingredient in deciding whether he inhabits there, it is not conclusive (b). A person may inhabit a place without sleeping there, or he may sleep there without inhabiting it (c).

The same section of 32 & 33 Vict. c. 55, explains that the seven miles within which the party must reside, are to be measured in the manner directed in section 76 of 6 & 7 Vict. c. 18, *i. e.* "by a straight line on the horizontal plane from the point from which such distance is to be measured;" the same section provides that where there is an ordnance map of the district, the distance may be measured thereby.

This method of measurement is an undoubted improvement on that prescribed by the repealed section of the Municipal Corporation Act, viz: "by the nearest public road or way by land or water;" for though such was the mode of calculating distance adopted in former times by the Courts in cases of agreements not to carry on a particular trade or business within a certain distance (d); it was open to the objection, that by the formation of a new road or the alteration of an old one, the distance of a man's residence may be considerably varied from any given spot, and later decisions have established that the linear mode of measurement was the proper one in such cases (e).

(a) See *R. v. Sargent*, 5 T. R. 466; *R. v. Mitchell*, 10 East, 511; *Bruce v. Bruce*, 2 B. & P. 229; *Whithorn, App., Thomas, Resp.*, 7 M. & G. 1.

(b) Per *Blackburn, J.* in *R. v. Exeter (Mayor)*, *Dipstale's Case*, L. R. 4, Q. B. 116.

(c) *Id.* 115; see also *per eundem* in *Wescomb's Case*, *Id.* 113.

(d) See *Minger or Wing v. Earle*, Cro. El., 212, 216; *Leigh v. Hind*, 9 B. & C. 774; *Wood v. Donnett*, 2 Stark. R. 89.

(e) See *Duignan v. Walker*, 28 L. J. Ch. 867; *Luke v. Butler*, 24 L. J. Q. B. 273. Under the 27th section of the Parliamentary Reform Act (2 & 3 Will. 4, c. 45), the occupier of certain premises, in order to be entitled to the franchise, was also required to reside within seven miles of the borough: but nothing was said as to the mode of measurement, whether it should be by the nearest road, or what is commonly called "as the crow flies," that is by the linear method (as described in the 6 & 7 Vict. c. 18, s. 76, *supra*), and considerable difference of opinion existed among revising barristers as to which method should be adopted. After the passing of the Municipal Corporation Act, however, which upon this subject, might be considered in



Nothing is said in the Act as to the point from which the distance is to be measured; but it would probably be from the nearest point in the boundary of the borough to the residence of the party (*f*).

#### SECTION 4.

##### *Of being Rated.*

The statute (*g*) requires that the party shall have been rated to all the poor rates made for the parish in which the premises occupied are situated during the requisite period of occupation.

A poor rate, to be valid, must be made by the majority of the parish officers (*h*); it must be allowed by two justices; and the parish officers must give notice of the rate on the Sunday after it has been so allowed (*i*).

The Parochial Assessment Act (*k*) also requires that all rates shall be made in the form given in the schedule, and that cer-

generally adopted the road measurement, as pointed out in the first-mentioned Act; at least till a parliamentary committee (Youghal, F. & F. 395,) and Foster B. in Ireland (*Daly's Case*, Alc. Reg. Ca. 252), decided in favour of the other method. When the Registration Act (6 & 7 Vict. c. 18. s. 76, *supra*), enacted that the distance under the Reform Act should be measured by the linear method, one mode of measurement was adopted for the parliamentary franchise, and another for the corporate franchise with reference to the same places; so that by this difference of estimating distances it might happen that a party might be entitled to one franchise and not to the other. This inconvenient anomaly was pointed out in the former edition of this book, but is now removed by the provisions of 32 & 33 Vict. c. 55, s. 1.

(*f*) A remarkable discrepancy may here be noticed, as to the point from which the distance is to be measured in the cases of the old voters, freemen and others, and the new class of voters, the £10 householders, introduced by the Reform Act. A residence within seven miles of the borough is required in both instances; but in the case of freemen the distance is to be measured from the place where the poll had been usually taken before the passing of the Act (2 & 3 Will. 4, c. 45, s. 33), while in that of the £10 householders the distance is to be within seven miles of the borough, "or any part thereof," and that distance being now measured upon the horizontal plane (6 & 7 Vict. c. 18, s. 76), may be taken from the point in the borough which is nearest in a straight line to the voter's residence.

(*g*) 32 & 33 Vict. c. 55, s. 1, App., p. ccvii.

(*h*) *R. v. Atkins*, 4 T. R. 12.

(*i*) See 17 Geo. 2, c. 3; *B. v. Newcombe*, 4 T. R. 868; *Sibbold v. Roderick*, 11 A. & E. 38; and see *Bushell*, App., *Luckett*, Resp., 2 C. B. 111; Bar. & Arn. 635.

(*k*) 6 & 7 Will. 4, c. 96, s. 2.

tain particulars are to be therein stated; and that the parish officers shall, before the rate is allowed by the justices, sign the declaration given at the foot of the form; and enacts that "otherwise the said rate shall be of no force or validity." It has been held that these latter words apply only where the declaration at the foot of the form is not signed by the parish officers; not where there is a deviation from the particulars prescribed in the earlier part of the section (a).

The following decisions as to what constitutes a valid rating under the Reform Act, have been pronounced by the Court of Common Pleas, upon appeals from revising barristers under the Registration Act; and may be referred to as equally applying to the statute under consideration.

If the rate is in such form that the name of the occupier appears, the premises for which he is rated, the rateable value thereof, and the amount of the rate, it is a sufficient rating (b).

But the name of the party intended to be charged must actually appear on the rate. Thus, where A. and B. jointly occupied premises, but in the poor rate B. alone was rated as occupier, it was held that A. was not rated, though he had *bonâ fide* paid the rates with his own hand, but without being called upon to do so (c).

Where, however, the name of the occupier of a house had been inserted as an interlineation upon the rate (d), between the name of his landlord (who had always hitherto been rated in respect of the premises), and that of another party who was rated for other premises, though without any bracket or other connecting mark, and without any particular premises or amount of rating being carried out in the several columns referring to such particulars, it was held that the occupier was duly rated in respect of the premises he occupied (e).

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(a) *R. v. Fordham (Inhabitants)* 11 A. & E. 73; and see per *Lord Mansfield*, C. J. in *R. v. St. Luke's Hospital*, 2 Burr. 1063.

(b) By *Tindal*, C. J., in *Wright, App., Stockport, Resp.*, 5 M. & G. 33; Bar. & Arn. 39 58.

(c) *Moss, App., Lichfield (Overseers), Resp.*, 7 M. & G. 72, Bar. & Arn. 330.

(d) Under a claim to be rated pursuant to the 30th section of the Reform Act. See the 11th section of the Municipal Corporation Act, *post*.

(e) *Pariente, App., Luckett, Resp.*, 2 C. B. 177; Bar. & Arn. 700. And see *Judson, App., Luckett, Resp.*, 2 C. B. 197; Bar. & Arn. 707.

Where the occupier of a house, No. 3, in a street, had been rated by mistake for No. 4, and the rates for No. 3, had been duly paid, it was held that he was sufficiently rated in respect of No. 3 (*f*).

The 12th section of the Municipal Corporation Act (*g*), and the 8th section of the 7 Will. 4 and 1 Vict. c. 78 (*h*), contain similar provisions with regard to the rating of a former occupier in cases of title acquired by descent, marriage, devise, &c., as to the occupancy of such former occupier, namely, that such rating shall be reckoned as the rating of the party to whom the property so devolves. And the 9th section of the last mentioned statute (*i*) also provides that the rating in the name of the previous occupier shall be considered a sufficient rating of the person so entitled by descent, &c. Without this last mentioned enactment, it would have been necessary that such party should have been actually rated from the time of his becoming entitled to the property.

By the 11th section of the Municipal Corporation Act (*k*), it is enacted that any person occupying premises sufficient to confer the franchise, may claim to be rated to the poor rate in respect thereof, whether or not the landlord shall be liable to be rated; and upon the occupier so claiming and actually paying or tendering the full amount of the last-made rate then payable in respect of the premises, the overseers are required to put his name upon the rate for the time being; and in case they neglect to do so, the occupier shall, for the purposes of the Act, be deemed to have been rated from the period at which the rate was made: and it is also provided, that where by any statute the landlord shall be liable to the payment of the poor rate in respect of premises in the occupation of a tenant, the Act shall not vary or discharge the liability of the former; but that if a tenant rated in consequence of a claim to that effect shall not pay the rate, the landlord shall remain liable for the payment in the same manner as if he alone had been rated.

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(*f*) *Cooke, App., Luckett, Resp.*, 2 C. B. 168; Bar. & Arn. 647; see further cases in Elliott on Registration, 190; 2nd Ed.

(*g*) App., p. ix.

(*h*) App., p. lxxii.

(*i*) App., p. lxxxiii.

(*k*) App., p. ix.

The provisions of this section are nearly similar to those contained in the 30th section of the Parliamentary Reform Act.

The claim to be rated is not required to be in writing. The statute is silent as to the party to whom it is to be made; it seems it will be sufficient if made to any one of the overseers.

The party claiming to be rated must at the same time either actually pay or tender (a) the full amount of the *last-made* rate, which may then be payable in respect of the premises, by whomsoever owing. This provision differs from that of the Reform Act, by which the party claiming to be rated must pay the whole arrear of rates, whatever they may be, which may then be due.

Upon a proper claim being made, the overseers are directed to put the name of the party upon the rate for the time being: and if they omit to do so, he is nevertheless, for the purposes of the Act, to be deemed to have been rated from the time when that rate was made.

It has been already stated a rate is not complete till publication. If, therefore, a party claims to be rated after a rate has been made in vestry, but before its publication, and the overseers neglect to put his name upon the rate, he will be deemed to be rated to the previous valid rate and not to the one last made out.

Thus, where a rate was made on the 28th September, purporting to be made for thirteen weeks from the 16th September to the 16th December, and a new rate was made on the 23rd December, but was not published till the 5th January following, it was held (under the clause in the Reform Act) that a claim to be rated, made on the 27th December, operated as a claim to be put upon the September rate (b).

If the overseers omit to put the name of a party upon a rate, in compliance with a proper claim, he will be deemed to be

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(a) As to what will be a sufficient tender, see *Thomas v. Evans*, 10 East, 104; *Dickenson v. Shee*, 4 Esp. 68; *Harding v. Davies*, 2 C. & P. 77; *Finch v. Brooke*, 1 N. C. 253; *R. v. Corzens*, Dougl. 426.

(b) *Bushell*, App., *Luckett*, Resp., Bar. & Arn. 635; 2 C. B. 111.

rated to that current rate, but to that only; and if his name is omitted from the next or subsequent rates, it will be necessary for him to repeat his claim as often as his name is omitted (*c*).

None of the Acts relating to municipal corporations contain similar provisions to those which it was thought necessary to insert in the 75th section of the Parliamentary Registration Act (*d*) to the effect that a mere inaccurate description of persons or property in a rate shall not prevent occupiers being registered.

## SECTION 5.

### *Of the Payment of Rates.*

The 1st section of the 32 & 33 Vict. c. 55 (*e*), requires that all poor rates and all borough rates directed to be paid under the provisions of any Municipal Corporation Act, that have become payable on the 5th January in each year, shall be paid on or before the 20th July following.

The payment must be made by the party himself or his agent. An unauthorized payment by another person on his behalf will not be sufficient. Where, therefore, it appeared that certain persons, being in arrear for their rates and unable to pay them, a third party, a volunteer, for political purposes, paid the whole of the arrears in a gross sum, in some cases without the knowledge of the persons from whom they were due, and without any authority from them, it was held that this was not sufficient (*f*). "If the practice described were to prevail," observed Lord Denman, C. J., "there would be great danger of the most enormous bribery." On the other hand, where there exists a *bonâ fide* arrangement between a landlord

(*c*) *Wansey*, App., *Perkins*, Resp., Bar. & Arn. 402; 7 M. & G. 145.

(*d*) 6 & 7 Vict. c. 18.

(*e*) App., p. ccvii.

(*f*) *R. v. Bridgnorth (Mayor)*, 10 A. & E. 66.

and his tenant, that the former shall pay all rates and taxes in respect of the premises occupied by the latter, the tenant paying an additional rent in consequence thereof, the payment of the landlord will operate in law as a payment of the tenant. This has been decided in several cases under the Reform Act (*a*), (the provisions of which in this respect are analogous to those of the Municipal Corporation Act), and in conformity with decisions on the law of settlement (*b*).

The occupier is required to pay, besides the poor rates, all borough rates, if any, directed to be paid under the provisions of the Act. This provision has been held to apply only to the borough rate, to be made in the nature of a county rate under the 92nd section of the Act (*c*), and, therefore, that a party was not disqualified in consequence of not having paid a *watch-rate* made under a local Act; although under the 92nd section the town council have the power to levy such a rate (*d*).

An illegal rate being a nullity, the non-payment thereof will not disqualify a party, even though he have not appealed against it (*e*).

## SECTION 6.

### *Of the Enrolment of the Party.*

This subject will be more properly considered hereafter in the chapter that relates to the formation of the burgess roll.

(*a*) *Wright*, App., *Stockport (Town Clerk)*, Resp., Bar. & Arn. 39; 5 M. & G. 33; *Hughes*, App., *Chatham (Overseers)*, Resp., Bar. & Arn. 61; 5 M. & G. 54; *Cooke*, App., *Luckett*, Resp., Bar. & Arn. 647; 2 C. B. 168.

(*b*) See *R. v. Bridgewater*, 5 T. R. 550; *R. v. Axmouth*, 8 East, 383; *R. v. Okehampton*, Bur. S. C. 5.

(*c*) App., p. xxxviii.

(*d*) *R. v. Lichfield (Mayor)*, 2 Q. B. 693.

(*e*) *R. v. New Windsor (Mayor, &c.)*, 7 Q. B. 908. As to the payment of compositions for poor rate under local Acts, see *R. v. Kidderminster (Mayor, &c.)*, 20 L. J. Q. B. 281.

## SECTION 7.

*Of Disqualifications.*1. *Aliens.*

An alien is one born out of the Queen's dominion or allegiance, who has not been naturalized by Act of parliament, or made a denizen by letters patent (*f*).

But it has been enacted by different statutes (*g*), that children born out of the Queen's allegiance, whose fathers or paternal grandfathers were natural-born subjects, are to be deemed natural-born subjects themselves, unless their said ancestors were attainted or banished beyond sea for high treason, or were at the birth of such children in the service of a prince at enmity with Great Britain (*h*).

2. *Receipt of Alms.*

The alms mentioned in the statute, the receipt of which within twelve calendar months before the 31st of July will disqualify a party from being a burgess, consist of "parochial relief or other alms" (*i*).

It is enacted, however, by the 10th section of the Municipal Corporation Act (*k*), that medical or surgical assistance given

(*f*) See 1 Bl. Com. 373; Hey. Co. 251, 253.

(*g*) See 7 Anne, c. 5; 4 Geo. 2, c. 21; 13 Geo. 3, c. 21.

(*h*) See *Doe v. Acklam*, 2 B. & C. 779; *Doe v. Mulcaster*, 5 B. & C. 771, as to children born in the United States of America of parents born or residing there before the recognition of their independence. See also 13 Geo. 2, c. 3, as to foreign seamen serving on board an English ship in time of war; 13 Geo. 2, c. 7; 20 Geo. 2, c. 44; 13 Geo. 3, c. 25, as to foreign Protestants or Jews resident seven years in the American colonies; 2 Geo. 3, c. 25, as to foreign Protestants serving two years in the army there; 22 Geo. 2, c. 45, as to the same serving three years in the whale fishery.

(*i*) The repealed section of the Municipal Corporation Act contained these additional words, "or any pension or charitable allowance from any fund intrusted to the charitable trustees of such borough."

(*k*) App., p. viii.

by the *charitable trustees* of a borough, or the instruction of the child of any person in a public or endowed school, shall not be a cause of disqualification.

The Court of Queen's Bench have decided that the words "other alms" mentioned in conjunction with "parochial relief" means some description of alms in the nature of parochial relief (a). And, therefore, that the receipt of weekly alms from a charity fund not under the control of the overseers or the charitable trustees was not a disqualification.

It seems that, in order to constitute parochial alms a relief, the fund of which it is received must be of a public nature, and must be administered by the officers of the parish (b).

There have been numerous cases decided by parliamentary committees, both before and after the Reform Act, as to the nature and extent of the relief which will disqualify a party from exercising the parliamentary franchise; and although these cases are not of very high authority in the courts of law, still some of the more important may be here referred to as affording a tolerable exposition of this branch of the subject.

It seems that parochial relief of any kind, given either to a party himself, or with his knowledge and consent to any member of his family whom he is bound to support, will disqualify him from acting as a burgess.

Relief, therefore, in any shape, whether by taking the party or his family into the workhouse, or by giving them relief either in money or kind out of doors, or by employing them as parish labourers either at lower wages than other labourers receive, or probably even at the same rate, if the wages were paid out of the parish funds, would act as a disqualification (c).

But parochial relief given to the father of a man is not a disqualification of the latter, as there is no legal obligation on a

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(a) *R. v. Lichfield (Mayor)*, 2 Q. B. 693; see also *The Taunton Case*, 1 Doug. El. Ca. 370.

(b) See *R. v. Halesworth (Inhabitants)*, 3 B. & Ad. 717.

(c) *Bedford Case*, C. & R. 75; S. C. P. & K. 128, 130.



son to support his father till an order of justices has been made against him (*d*).

It will be observed, that medical or surgical assistance given by the *charitable trustees* of the borough will not disqualify a party; but medical relief given by the *parish*, whether by the administration of medicine or by the attendance of the parish apothecary upon the party himself (*e*), or upon his wife during her lying-in (*f*), will have the effect of disqualifying. The being sent to a lunatic asylum at the parish expense will have the same effect (*g*).

The decisions above referred to have been those of parliamentary committees as to the disqualifying effect of the receipt of alms, and they seem to be based upon sound principle. In some extraordinary instances of accident (*h*) or public calamity, these tribunals, previous to the passing of the Reform Act, have held, that temporary assistance provided by the parish did not affect the vote. Thus persons whose children had been inoculated (*i*), or sent to a pest-house (*k*) at the parish expense, at the request of the vestry, with a view to prevent the infection from spreading, were held not to be disqualified.

But since the passing of the Reform Act, the provisions of which are equally positive and unexceptional with those contained in the Municipal Corporation Act, committees have held that persons who have received parochial medical relief, during the prevalence of the cholera, were disqualified (*l*).

Relief however given to a man's wife who is living in adultery, will not disqualify him; because, as he is under no legal obliga-

(*d*) Under 43 Eliz. c. 2, s. 7. (See 4 & 5 Will. 4, c. 76, s. 56.) *R. v. Ireland*, L. R. 3 Q. B. 130. See also *Trotter v. Trevor*, 13 C. B. (N. s.) 50. The decisions of parliamentary committees had been the other way. See *Rogers on Elections*, 10th Ed., pp. 184-5.

(*e*) *Hearsom's Case*, *Colchester*, 1 Peck. 508.

(*f*) *Iron's Case* (*Ib.*)

(*g*) *Bedford*, P. & K. 129; C. & R. 79.

(*h*) *Colchester*, 1 Peck, 508.

(*i*) *Cricklade*, 2 Lud. 356, 364.

(*k*) *Cirencester*, 2 Fras. 453.

(*l*) *Brocket's Case*, *Bedford*, C. & R. 80; see also *Wilshire's Case* (*Ib.*); P. & K. 130; C. & R. 79; *Clark's Case* (*Ib.*); P. & K. 132; C. & R. 80.

tion to support her under such circumstances (*a*), the relief is in no way an assistance to him (*b*).

And pecuniary relief by way of loan, which is agreed by the parties to be treated as a debt, will not disqualify (*c*).

It is provided by the 18 Geo. 3, c. 59, s. 25, that parochial relief given to the family of any militia-man during actual service, shall not deprive him of the *parliamentary* franchise; but as the operation of that Act is limited to that particular franchise, it seems that relief under such circumstances would operate as a disqualification under the Municipal Corporation Act.

By 33 & 34 Vict. c. 75 (The Elementary Education Act), s. 25, it is enacted that payment of school fees is not "parochial relief;" and probably the courts would hold that it did not come within the meaning of "other alms."

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(*a*) *R. v. Flintan*, 1 B. & Ad. 227.

(*b*) *Rochester*, K. & O. 114.

(*c*) *Newington's Case*, *Canterbury*, K. & O. 320; *Norman's Case*, *Rochester*, (*Ib.*) 114.

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## CHAPTER VII.

### *Of the Formation of the Burgess Lists.*

As has been before seen, a party to be entitled as a burgess must be duly enrolled.

The mode of forming the burgess roll is directed by the 15th section of the Municipal Corporation Act (*d*), as altered and amended by later Acts. The overseers of the poor of any parish (*e*), or the major part of them (*f*), or the persons who execute the duties of overseers (*g*), are directed, on the 1st (*h*) of September in every year, to make out an alphabetical list (*i*) of all persons entitled to be enrolled on the burgess roll of that year in respect of property within the parish (which list is to contain the name at full length of the party, the nature of the property rated, and the street, &c., where the property is situated, for which he is then rated); the overseers are also to *sign* such list; to deliver it on the same day to the town clerk of the borough, or to the person executing the duties of town clerk (*k*), and to keep a true copy of it to be perused by *any person* without fee, at all reasonable hours between that day and the 15th of September.

Precincts and extra-parochial places having no overseers are, for the purposes of making out the lists, to be deemed within the adjoining parish (*k*).

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(*d*) App., p. x.

(*e*) See as to the appointment of overseers in boroughs generally, 12 & 13 Vict. c. 8; for parts of parishes partly within a borough, 7 Will. 4, and 1 Vict. c. 81, s. 3; and for several of such parts of parishes, 8 & 9 Vict. c. 110, s. 8, App., p. cxiii.

(*f*) 16 & 17 Vict. c. 79, s. 14, App., p. cxxxix.

(*g*) 5 & 6 Will. 4, c. 76, s. 142, App., p. lviii.

(*h*) 20 & 21 Vict. c. 50, s. 7, App., p. cl.

(*i*) See the form given in the Schedule (D), No. 1, to the 5 & 6 Will. 4, c. 76, App., p. lxxviii. Where the council has divided a borough or any ward or wards therein into polling districts (see *post*, p. 125); the overseers are, as far as practicable, to make out the lists of burgesses in such a manner as to divide the names in conformity with such districts: 38 & 39 Vict. c. 40, s. 10, App., p. ccxcv.

(*k*) See 5 & 6 Will. 4, c. 76, s. 16, App., p. x.

By the 48th section, if any overseer neglects or refuses to make out, sign and deliver such list, or refuses to allow any person having right thereto, to peruse the same, he shall for every such offence be liable to a penalty of £50 (*a*).

Before the 16 & 17 Vict. c. 79, it was held that it was the duty of all the overseers to sign the lists, and if any one omitted to do so, whether the omission were wilful or not, he was liable to the above penalty (*b*); and where a parish was divided under a local Act into nine wards, for each of which a separate overseer was appointed, who was also an overseer for the whole parish, all the lists of the nine wards were considered as forming one parish list, which must be signed by all the nine overseers; and that each overseer who had omitted to do so was liable to the above penalty (*c*). By the 14th section of the last-mentioned statute (*d*) however, it is enacted that every matter directed by the Municipal Corporation Act, or by any Act amending the same, to be done by the overseers of the poor, may be lawfully done by the major part of them.

A difficulty, however, may arise as to the application of this section. Suppose there are three overseers in a parish. If two of them sign the lists, the terms of this section would be complied with. If none sign, it may be that all three would be liable to the penalty. But if only one sign it might be difficult to select which of the two others should be so liable, or whether they would both be so.

A printed list, corrected by an overseer in his own handwriting, in which his own name was inserted as a burgess, is not a sufficient signing of the list with n the statute (*e*).

By the 24th section of the Municipal Corporation Act (*f*) the town council are directed to take an account of the expenses of

(*a*) 5 & 6 Will. 4, c. 76, s. 48, App., p. xx. As to the practical result of the neglect to make out such list, see the next chapter.

(*b*) *King v. Burrell*, 12 A. & E. 460; 4 P. & D. 207.

(*c*) *King v. Shore*, 3 Q. B. 31; 2 G. & D. 453; see also *Clarke v. Gant*, 8 Exch. 252.

(*d*) App., p. cxxxix.

(*e*) *King v. Burrell*, *ut supra*.

(*f*) 5 & 6 Will. 4, c. 76, App., p. xiii.

the overseers in making out the lists, and to make an order upon the treasurer of the borough to pay the same out of the borough fund.

The Act does not contain any positive direction to the treasurer to pay the money according to the order (*g*). It seems, therefore, he could not be indicted for refusing to do so; but, as will be hereafter seen, the town council have power to remove him (*h*).

By sect. 3 of 32 & 33 Vict. c. 55 (*i*), the overseers are also required to make out and publish a separate list of occupiers of premises within the borough who are resident within fifteen miles of the borough, such persons being qualified to be elected councillors or aldermen (*k*), and all the provisions of the 5 & 6 Will. 4, c. 76, with respect to objections and claims are to apply to such separate list.

The 15th section of the 5 & 6 Will. 4, c. 76, further requires the *town clerk* forthwith, *i. e.*, after the delivery of the overseers' lists to him, to cause copies thereof to be printed; to deliver a copy of all such lists to any person requiring the same, on payment of a reasonable price for each copy; and to cause a copy of all such lists to be fixed on the door of the town hall, or in some conspicuous place in the borough, on every day during the week next preceding the 15th of September in every year, *i. e.*, from the 8th to the 14th September inclusive.

By the 48th section the town clerk is liable to a penalty of £50 if he shall neglect or refuse to receive, print, and publish the lists as required, or shall refuse to allow any such lists to be perused by any person having a right thereto.

It would seem that the town clerk should see that there is a perfect list exposed every morning of the week in question; whether or not he may be responsible for the list remaining so exposed during the whole of each day (*l*).

It is to be observed that, by the language of the 15th section,

(*g*) See sec. 99, App., p. xliii, as to the payment of the salary of a police magistrate.

(*h*) See sec. 65, App., p. xxvii.

(*i*) App., p. ccviii.

(*k*) *Vide, post*, c. 11, p. 88

(*l*) *R. v. Rochester (Mayor)*, 7 E. & B. 910, 923; E. B. & E. 1024.

“any person” without limitation would seem to be entitled to peruse the overseers’ lists, and to have a copy delivered to him by the town clerk, but the penalty given by the 48th section is confined to cases where an overseer or town clerk refuses the permission to peruse to “any person having a right thereunto;” so that taking the two classes together, it may perhaps be inferred that the intention of the legislature was to give the right of perusing the lists, or of having a copy, to such persons only as had some interest in the affairs of the borough; and that a mere stranger should not have a right thereto; at any rate it seems that such a stranger could not enforce the penalty.

It is further to be observed, that no penalty is given by the 48th section against the town clerk for neglecting or refusing to deliver a copy, as he is required to do by the 15th section; although, as has been seen (a) he is liable to a penalty if he refuses to allow the list to be perused.

It would seem that an omission or neglect on the part of the overseers or town clerk in making out or publishing the lists in proper time, will not affect their validity, as the provisions in the Act are merely directory (b).

By the 17th section (c), any person whose name has been omitted from a burgess list, may, on or before the 15th September, give to the town clerk a written notice of claim to have his name inserted therein (d); which notice must specify the premises occupied by the party, the parish in which he has been rated (e), and the period for which he has been rated; it must also be signed by the claimant and state the place of his abode.

By the same section, any person whose name has been inserted in a burgess list may object to any other person as not entitled to have his name *retained* therein; and for this purpose he is, on or before the 15th September, to give to the town clerk, and also to the person objected to, or leave at the

(a) *Ante*, p. 75.

(b) See *R. v. Norwich (Mayor)*, 1 B. & Ad. 310. See also *Limerick*, 1 P. & K. 366, 460; *New Sarum*, *Id.* 242.

(c) 5 & 6 Will. 4, c. 76, App., p. x.

(d) See the form, App., p. lxviii.

(e) See *R. v. Kidderminster (Mayor, &c.)*, 2 L. M. & P. 201; 20 L. J. Q. B. 281.

premises for which he shall appear to be rated in the list, a written notice of his objection (*f*); which notice is to describe the person objected to as described in the burgess list, is to be signed by the objector, and is to state his place of abode and the property for which he is said to be rated in the list.

The form of both the notice of claim and the notice of objection may be "to the like effect" with those given in the schedule to the Act (*g*), but any material variation from that form will render the notice nugatory.

Thus the omission of any of the required particulars, such as the premises occupied by the party, the parish in which he has been rated, or the place of his abode (*h*), will invalidate a notice of claim (*i*).

So a similar omission in a notice of objection will destroy its effect and the party will not be heard in support of his objection.

Thus, as the notice is required to contain a statement of "the place of abode" and also of the property for which the objector is said to be rated in the burgess list, a notice signed "A. B., King's Quay, Harwich," is insufficient, as it contains no description of the situation of the objector's property (*k*).

(*f*) See the form, App., lxxiii.; and see *R. v. Harwich (Mayor, &c.)*, 1 E. & B. 617.

(*g*) App., p. lxxiii.

(*h*) But see *Petersfield*, P. & K. 46.

(*i*) See the following decisions upon the validity of notices of claim under the Parliamentary Registration Act (6 Vict. c. 18): *Hitchins*, App., Bar. & Arn. 545; 2 C. B. 25; *Daniel*, App., Camplin, Resp., Bar. & Arn. 425; 7 M. & G. 167; *Flounders*, App., Dance, Resp., Bar. & Arn. 588; 2 C. B. 63. As to the power to amend a notice, see *Hitchins*, App., Brown, Resp.; *Flounders*, App., Dance, Resp., *ut supra*; *Nunn*, App., Denton, Resp., 7 M. & G. 66.

(*k*) See by Lord Denman, C. J., in *R. v. Harwich (Mayor)*, 8 A. & E. 919, 920. See also *Flight's Case*, Bedford, P. & K. 119. And see the following decisions upon the validity of notices of objection under the Parliamentary Registration Act: *Hinton*, App., Hinton, Resp., Bar. & Arn. 421; 7 M. & G. 163; *Pruen*, App., Cox, Resp., Bar. & Arn. 514, 2 C. B. 1; *Allen*, App., House, Resp., Bar. & Arn. 415, 7 M. & G. 157; *Gadsby*, App., Warburton, Resp., Bar. & Arn. 272, 7 M. & G. 11; *Wills*, App., Adey, Resp., Bar. & Arn. 782, 2 C. B. 246; *Knowles*, App., Brooking, Resp., Bar. & Arn. 755, 2 C. B. 226; *Tudhall*, App., Bristol (Town Clerk), Resp., Bar. & Arn. 8; 5 M. & G. 5; *Woollett*, App., Davis, Resp., 4 C. B. 115; *Sheldon*, App., Fletcher, Resp., 4 C. B. 14. As to the service of such notice, see *Allen*, App., Greensill, Resp., 4 C. B. 100; *Watson*, App., Pitt, Resp., 5 C. B. 77.

But it is sufficient that a notice follows the form given in the schedule; and as that does not specify the parish in which the objector's qualifying property is situate, nor the nature of the property in respect of which the person objected to is rated, the omission of these particulars will not invalidate the notice (a).

It seems that both a notice of claim and a notice of objection should be signed by the party himself and not by his agent (b), but a signature with only the initials of the christian name is sufficient (c); but a date of the day and month, without the year would be insufficient (d).

It is to be observed that this Act does not give power to any person to oppose the *claim* of another to have his name inserted in a burgess list; the right of objection being limited to the *retaining* of names upon the list. There was a similar defect in the Parliamentary Reform Act (e), but this was remedied by the Registration Act (f), which gives to any person whose name is on a list of voters the power to oppose any claimant, upon giving a written notice to the revising barrister of his intention so to do. This anomaly, which was pointed out in the former edition of this work (1851), still remains unaltered.

By the 17th section, the town clerk is required to make a list of the claimants (g), which is to state the name of each claimant, the nature and situation of the property for which he then is rated, and the parish or parishes in which he has been rated as stated in his claim.

He is also to make out a similar list of persons objected to (h), which is likewise to state the name of each such person, the

(a) *R. v. Monmouth (Mayor, &c.)*; *R. v. Bolton, (Mayor, &c.)*, L. R. 5 Q. B. 251.

(b) See *Jones, App., Cumming, Resp.*, Bar. & Arn. 347, 7 M. & G. 88, as to a notice of objection under the Parliamentary Registration Act.

(c) *R. v. Hartlepool (Mayor, &c.)*, 2 L. M. & P. 666; 21 L. J., Q. B. 71. See *R. v. Avery*, 18 Q. B. 576; 21 L. J., Q. B. 428; *R. v. Bradley*, 3 E. & E. 634.

(d) See *Beenlen, App., Hoskin, Resp.*, 4 C. B. 19.

(e) 2 Will. 4, c. 45, s. 47; and see 6 Vict. c. 18, ss. 15, 17.

(f) 6 Vict. c. 18, s. 39.

(g) See 5 & 6 Will. 4, c. 76, Schedule (D), form No. 4. App., p. lxi. By a printer's error "the form Number 8" is referred to instead of Number 4.

(h) See 5 & 6 Will. 4, c. 76, Schedule (D), form No. 5, App., p. lxi.



nature of the property for which he is then rated, the situation of the property for which he is said to be then rated in the overseers' list, and the parish in which is the property for which he is so said to be rated.

He is to cause copies of such last-mentioned lists to be fixed on the door of the town hall or in some public situation within the borough, during the eight days next preceding the 1st October (*i*). And he is to keep a copy of each list, to be perused by any person (*k*), without fee, at all reasonable hours during that period (Sundays excepted), and to deliver a copy to any person (*k*) requiring it upon payment of one shilling for each copy.

By the 48th section the like penalty of £50 attaches to the town clerk for refusing to print and publish such lists as in the case of the lists delivered by the overseers, and also for refusing to allow such lists to be perused by any person having a right thereto; no penalty being given for a refusal to deliver a copy upon the payment of one shilling (*l*).

The questions arising upon the validity of these lists will be more properly considered in the next chapter, which treats of the revision of the burgess lists.

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(*i*) See *R. v. Rochester (Mayor, &c.)*, *ante*, p. 75.

(*k*) See *ante*, p. 75.

(*l*) See *ante*, p. 76.

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## CHAPTER VIII.

### *Of the Revision of the Burgess Lists.*

By the 20th section of the Municipal Corporation Act, barristers were to be appointed by the senior judge going the Summer circuit in 1835 (the year when the Act came into operation), to revise the burgess lists for that year only.

After that year the revision was appointed, by the 18th section (*a*), to take place before the mayor and two assessors.

The manner in which these officers are elected will be considered hereafter. But it may be here mentioned that the mayor has power to appoint an alderman or councillor to act as deputy mayor during his own illness or absence; such appointment to be notified in writing to the council (*b*), and such deputy may, during that period, lawfully do all acts (with certain exceptions) which the mayor might do in his official capacity (*c*). And every assessor, as soon as conveniently may be after his election, and from time to time as the occasion may arise, is to appoint a deputy to act for him in case of his illness or incapacity, such appointment to be signified by him under his hand to the council (*d*).

The mayor and the assessors are required by the 18th section, every year to hold an open court in the borough, between the 1st and 15th October inclusive, for the purpose of revising the burgess lists, having given three clear days' notice thereof, to be fixed upon the door of the town hall, or in some public place in the borough.

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(*a*) App., p. xi.

(*b*) 16 & 17 Vict. c. 79, s. 7 (*Ib.*).

(*c*) *Id.* sec. 8. App., p. cxxxviii.

(*d*) 7 Will. 4 and 1 Vict. c. 78, s. 17, App., p. lxxxiv. There is no express power given to the deputy of an assessor to act for him as there is in the case of the deputy of a mayor (*supra*), but no doubt such power would be implied.

The town clerk, at the opening of the court, is to produce the burgess lists, and a copy of the lists of claimants and of persons objected to.

The overseers, vestry clerks and collectors of poor rates of every parish, are to attend the court, and answer upon oath (or affirmation where allowed by law) (*e*) all such questions as may be put to them touching any matter necessary to the revision of the burgess lists.

The mayor is to *insert* in the burgess lists the name of every claimant who shall be proved to the satisfaction of the court to be entitled to be inserted therein.

He is to *retain* the names of all persons to whom no objection has been made :—

and also the name of every person who has been objected to, when the objector does not appear, either by himself or some one on his behalf, to support his objection.

He is to *expunge* the name of every person who has been duly objected to, where the objector does so appear, and the person objected to fails to prove his qualification :—

and also the name of every person proved to be dead, whether objected to or not.

He is also required to *correct* any mistake or supply any omission in *any* of the lists in respect of the name or place of abode of any person, or of the local description of his property.

The separate list of persons eligible as councillors or aldermen (*f*) is to be revised in like manner as the burgess lists (*g*).

(*e*) Section 21, App., p. xii. *Scil.*, in the cases of Quakers, Moravians and Separatists, &c., 7 & 8 Will. 3, c. 34; 10 Anne, c. 23, s. 8; 22 Geo. 3, c. 30. See also 1 & 2 Vict. cc. 5, 15 and 77: affirmation or declaration, may also be made by any *witness* in any *court* of civil (17 & 18 Vict. c. 125, the Common Law Procedure Act, ss. 20, 103), or criminal judicature (32 & 33 Vict. c. 68), where he entertains conscientious objections to be sworn, or is objected to as incompetent to take an oath; but these provisions will not apply to proceedings before the mayor and assessor.

(*f*) *Ante*, p. 75.

(*g*) 32 & 33 Vict. c. 55, s. 3 (2), App., p. ccviii.

By the 19th section (a) the mayor is empowered to adjourn the court from time to time, so as no adjournment takes place beyond the 15th October:—

to require any overseer or other person having the custody of any poor rate book to produce the same (b), and allow it to be inspected:—

and to administer an oath, or affirmation (c), to all necessary parties.

The mayor and assessors are to determine upon the validity of all claims and objections.

The mayor is to write his initials against each name inserted or expunged from the lists, and against every correction made therein—

and also to sign his name to every page of the lists.

The mayor and assessors, in revising the lists, will have to consider and decide upon the validity of the various notices of claims and objections that are brought before them (d).

If the overseers have neglected to make out the burgess list for any particular or distinct parish, it seems doubtful whether the mayor may make out a list for the purpose of inserting the names of claimants (e).

Where the mayor and assessors considering a burgess list to be defective and void, have refused to revise it, they are not bound to revise the list of claimants to be inserted in such burgess list (f).

(a) App., p. xii.

(b) Query as to the power to compel the production. By section 35 of the Parliamentary Registration Act (6 Vict. c. 18) overseers and other officers are required to produce books and other documents before the revising barrister, and by section 51 he has the power of inflicting a fine of £5 if they refuse to do so, as "a breach of duty in the execution of the Act." But there is no similar provision in any of the Municipal Corporation Acts.

(c) See *ante*, p. 81, n. (e).

(d) As to these see the last chapter.

(e) *R. v. Lichfield (Mayor, &c.)*, 1 Q. B. 458; 1 G. & D. 28. See *Seale v. Reg., post*.

(f) *Harwich (In re Mayor, &c.)*, 21 L. J., Q. B. 193.

Where the mayor and assessors have omitted to hold the court, the Court of Queen's Bench (*g*) will grant a *mandamus* to the succeeding mayor to hold such court after the time mentioned by the statute, viz., the 15th October (*h*). A *mandamus* will also be directed to the mayor for the time being to hold a court, after the statutory time, for the revision of the list, where he and the assessors had erroneously determined that numerous notices of objections were invalid and had refused to inquire into the qualifications of the persons objected to; and this on the ground that the mayor and assessors by so doing had declined jurisdiction (*i*).

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(*g*) See note at the beginning of the volume.

(*h*) *R. v. Rochester (Mayor)*, 7 E. & B. 910; S. C. in error, E. B. & E. 1024. And see *Lewis v. Rochester (Mayor)*, 9 C. B. (N. S.) 401.

(*i*) *R. v. Monmouth (Mayor and Assessors)*; *R. v. Bolton (Mayor and Assessors)*, L. R. 5 Q. B. 251.

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## CHAPTER IX.

### *Of the Burgess Roll and Ward Lists; and of the power of the Court of Queen's Bench to insert the names of parties.*

When the burgess lists and the separate list (*a*), have been thus revised and signed, the mayor is to deliver them to the town clerk (*b*), who is to keep them, and cause a general alphabetical list to be made from the burgess lists in a book, with every name numbered. This book is to be completed by the 22nd of October, and forms the burgess roll, or the roll of the burgesses entitled to vote in the choice of the councillors, assessors and auditors, under the Act, at any election which may take place between the 1st of November in the year when the roll is made and the 1st of November following.

The separate list, above mentioned, is to be copied as a separate list at the end of the burgess roll (*c*).

Where, however, a borough is divided into wards, the burgess roll is to be made out in alphabetical lists of the burgesses in each ward, to be called "ward lists" (*d*).

The 23rd section of the Municipal Corporation Act (*e*) requires the town clerk to have written or printed copies of the burgess roll (which would include the "ward lists" above-mentioned) made every year; to be delivered to any person (*f*) applying for them upon payment of a reasonable price for each copy,

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(*a*) Under 32 & 33 Vict. c. 55, s. 3, App., p. ccviii.

(*b*) 5 & 6 Will. 4, c. 76, s. 22, App., p. xii.; 32 & 33 Vict. c. 55, s. 3, *ut supra*.

(*c*) 32 & 33 Vict. c. 55, s. 3, App., p. ccviii.

(*d*) 5 & 6 Will. 4, c. 76, s. 45, App., p. xx. As to the payment of the expenses incurred in making the "ward lists," see *Id.*, sec. 92, App., p. xxxviii.

(*e*) App., p., xiii.

(*f*) See *ante*, p. 45.

and the monies arising from such sale, and also of the overseers' lists of claims and objections before-mentioned, are to be paid over to the treasurer, and to be applied by him in aid of the borough fund, under section 92 (*g*).

It is provided by the 22nd section that no stamp duty shall be payable for the admission, registry, or enrolment of any burgess under the Act.

The 5th section of the 7 Will. 4 and 1 Vict. c. 78 (*h*) enacts that no burgess roll shall be questioned for the want of title of the mayor or assessors, provided they were in actual possession of the office at the time of the revision (*i*).

The 6th section of the same Act (*h*) provides that if from any neglect or informality a new burgess roll shall not have been made within the time directed by the Municipal Corporation Act, the burgess roll previously in force shall continue to be so until a new burgess roll shall have been made. And a similar provision has been made in the case of boroughs consisting of more than one parish, where the burgess roll for any parish or part of a parish has not been efficiently made out in any year (*k*).

The 7th section (*h*) enacts, that corporations in which no new burgess roll was made in the previous month of October, shall not, therefore, be taken to be dissolved.

Under the Municipal Corporation Act the decision of the mayor and assessors, either as to the rejection of a claim or the expunging of a name from the burgess list, was conclusive; but by the 7 Will. 4 and 1 Vict. c. 78, s. 24 (*l*), it is enacted that any person whose claim may have been rejected or whose name may have been expunged (*m*) may apply before the end of the

(*g*) App., p. xxxviii.

(*h*) App., p. lxxxii.

(*i*) See the provision at the end of section 53 of the 5 & 6 Will. 4, c. 76, App., p. xxiii, and 35 & 36 Vict. c. 60, s. 23, App., p. cxxl.

(*k*) 20 & 21 Vict. c. 50, s. 6, App., p. cxlix.

(*l*) App., p. lxxxv.

(*m*) This section speaks by mistake of "the revision of the burgess roll." But, as has been seen, it is the burgess *lists* that are revised, and from these when revised is formed the burgess *roll*. See by Lord Denman, C. J., in *R. v. Lichfield (Mayor)*, 1 Q. B. 461.

next term to the Court of Queen's Bench (a) for a *mandamus* to the mayor to insert his name, and the court may inquire into his title to be enrolled; and if the court award the *mandamus* the mayor [is to insert the name upon the burgess roll, and to add the words "By order of the Court of Queen's Bench," (a) and to subscribe his name thereto.

This appears to be a rather cumbrous, expensive, and dilatory machinery for effecting the object in view, and a direct appeal to the court from the decision of the mayor, in the nature of the appeal from revising barristers to the Court of Common Pleas given by the Parliamentary Registration Act (b), might have been preferable.

The court under this clause will inquire into the whole title of the applicant, and will not limit their inquiry to the points raised before the mayor on the revision (c); and they will exercise their powers if they are satisfied that a party is entitled to be on the burgess roll, even though there was no burgess list before the mayor, upon which his name could have been inserted (d).

In a borough comprising several districts, an inhabitant of one district qualified to be a burgess had sent in to the town clerk, before the annual revision, his notice of claim to be placed on the burgess list for his district. The overseers neglected to send any burgess list for that district to the revision court; the mayor, consequently, decided (against the opinion of the assessors) that the applicant's name could not be placed on any list, though he proved his qualification, and the burgess roll was made up, omitting his name. The court granted a *mandamus* to the mayor, under the 7 Will. 4 and 1 Vict. c. 78, s. 24, to insert the name of the claimant in the burgess roll (e).

A person whose name had been omitted from the burgess list in consequence of his refusal to pay a borough rate, claimed to have his name inserted, but his claim was rejected by the mayor and assessors. Upon a motion for a *mandamus* to the

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(a) See note at the beginning of the volume.

(b) 6 & 7 Vict. c. 18.

(c) *R. v. New Windsor (Mayor)*, 7 Q. B. 908.

(d) *R. v. Lichfield (Mayor)*, 1 Q. B. 543.

(e) *R. v. Harwich (Mayor)*, 8 A. & E. 919.



mayor to insert the name on the burgess roll, the court, having inquired into all the circumstances of the case, decided that the applicant was not bound to pay the rate in question, and awarded a *mandamus* (f).

Where the mayor had expunged a name from a list, it was held to be no answer to a *mandamus* that the list was invalid by reason of a defective signature thereto (g).

It is not, therefore, sufficient for an applicant to show that his name was inserted by the overseers, and was expunged by the mayor on an objection, which, for want of legal notice, the applicant alleges ought not to have been heard (h).

The *mandamus* to insert a name has been held not to be peremptory in the first instance (i); but the propriety of this decision has been doubted (i). The writ will be directed to the mayor of the borough generally, though the mayor who presided at the revision court had gone out of office before the rule *nisi* was obtained (k).

If the mayor does not appear to show cause why a *mandamus* should not issue directing him to insert the name of a party on the burgess roll, the burgess on whose objection the name had been struck off, will be allowed to show cause (l).

If the rule is discharged it will be with *costs*, on the general principle, that where a party required by law to pronounce a decision on certain points, is brought before the court by a motion impugning such decision, he is entitled to costs if the application fails (m).

(f) *R. v. Eye (Mayor)*, In re *Neobard*, 9 A. & E. 670.

(g) *R. v. Dover (Mayor, &c.)*, 11 Q. B. 260.

(h) *R. v. Harwich (Mayor)*, ante, p. 85.

(i) *R. v. Eye (Mayor)*, In re *Neobard*, 9 A. & E. 670.

(k) Per Lord Denman, C. J., in *R. v. Dover (Mayor, &c.)*, 11 Q. B. 276.

(l) *R. v. Exeter (Mayor)*, *Wescomb's Case*, L. R. 4 Q. B. 110.

(m) *R. v. Bridgnorth (Mayor)*, 10 A. & E. 66. See also, *R. v. Newbury (Mayor)*, 1 Q. B. 751.

## CHAPTER X.

### *Of the Council; and of the Election of Councillors.*

By the 25th section of the Municipal Corporation Act (a) it is required that in every borough there shall be a "council" (now usually termed "the town council"), to consist of a mayor, aldermen, and councillors.

The general election of councillors is to take place on the 1st of November in every year, or if that day be a Sunday, then on the following day (b). Or if it should not take place on the appointed day it may be held on the following day; or, again, if such following day is a Sunday, then on the Monday following (c). At least nine days' notice (d) of the election is to be given by the town clerk (in the form No. 1, in Sched. 1, to 38 & 39 Vict. c. 40), by placing the same on the door of the town hall, and in some conspicuous parts of the borough or ward for which the election is to be held (e).

The number of councillors to be elected for any borough is to be the number mentioned in conjunction with such borough in the schedules (A) and (B) to the Municipal Corporation Act (f).

One-third of the number of councillors are to go out of office on the day of election, being those who were elected in the previous year by the smallest number of votes. When the votes for any of such councillors are equal, *the majority of the whole council* (consisting of the mayor, aldermen, and councillors) (f), are to determine which of them shall go out of office (g).

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(a) 5 & 6 Will. 4, c. 76, App., p. xiii.

(b) *Id.*, s. 30, App., p. xv.

(c) 7 Will. 4 and 1 Vict. c. 78, s. 25, App., p. lxxxv.

(d) In reckoning time for the purpose of the 38 & 39 Vict. c. 40, Sunday, Christmas Day, Good Friday, and any day set apart for a public holiday, fast, or public thanksgiving is to be excluded. See sect. 11, App., p. ccxcvi.

(e) 38 & 39 Vict. c. 40, s. 1, sub-sect. (1), App., p. ccxciii.

(f) 5 & 6 Will. 4, c. 76, s. 25, App., pp. lix, lxx.

(g) *Id.*, s. 31, App., p. xv. After the passing of the Municipal Corporation Act, in some cases, where it was doubtful what councillors should have gone out of office by reason of the same persons having

It seems, therefore, that a mere majority of the members present will not be sufficient for this purpose, as it generally is for acts done by the council, provided the numbers present are not less than one-third of the council (*h*).

Any councillor going out of office is capable of being re-elected.

Every candidate must be nominated in writing, to be subscribed by two enrolled burgesses of the borough, or of the ward, (in the case of a ward election), as proposer and seconder, and by eight other such enrolled burgesses as assenting to the nomination. Each candidate is to be named by a separate nomination paper, but the same burgesses, or any of them, may subscribe as many nominations as there are vacancies to be filled up, but no more. Every person nominated must be enrolled on the burgess-roll, or his name must be inserted in the separate list at the end of the burgess-roll (*i*), and he must be otherwise qualified to be elected (*k*).

The nomination paper is to state the surname and other names of the person nominated, with his place of abode and description, and is to be in the prescribed form (*l*) or to the like effect.

The town clerk is to provide nomination papers and to supply

the same number of votes, the council had not determined who should go out of office under the provisions of the section just referred to: provisions were therefore made by the 10th section of the 7 Will. 4 and 1 Vict. c. 78, (passed in July, 1837), to remedy this state of things as far as related to the elections in the next following November, and in November, 1838.

(*h*) See 5 & 6 Will. 4, c. 76, s. 69, App., p. xxix. In the absence of any charter or usage to the contrary (see *R. v. Hoyte*, 6 T. R. 430), the general rule seems to have been, that any act required to be done by a corporate body might be done by the majority of the body present at a meeting duly convened (*R. v. Kynaston*, 2 Selw. N. P. 1143; *R. v. Monday*, Cowp. 530). But where an integral part of a corporate body consisting of a definite number was required to do any act, a majority of such integral part was bound to attend, otherwise the meeting was not complete for the purpose of doing such act, although other parts of the corporation joined in the act, and a majority of the whole body actually attended (6 T. R. 268). In the case of an election, if the majority dissented from the election of a particular person, but voted for nobody else, the election by the minority was good (*Oldknow v. Wainwright*, 2 Burr. 1017, S. C. *nom. R. v. Foxcroft*, 1 W. Black. 229). For other cases on this subject see Har. Dig. tit. *Corporation*.

(*i*) Under 32 & 33 Vict. c. 55, s. 3, App., p. ccviii, and *vide ante*, pp. 75, 81, 83.

(*k*) 38 & 39 Vict. c. 40, s. 1, (2) App., p. ccxciii.

(*l*) *Id.*, and Sched. 1, No. 2, App., p. ccxcvii.

any enrolled burgess with as many as may be required, and at the request of any such burgess is to fill up a nomination paper in manner prescribed by the Act (a).

Every nomination paper so subscribed is to be delivered by the candidate, or his proposer or seconder, to the town clerk seven days at least (b) before the day of election, and before five p.m. on the last day on which it may be delivered; and the town clerk is forthwith to send notice of such nomination to each person nominated (c).

The mayor is to attend at the town hall next after the last day for the delivery of nominations to the town clerk between two and four o'clock p.m., and is to decide on the validity of every objection made to a nomination paper, such objection to be in writing (d).

Each candidate so nominated may in writing under his hand, or, in case of his absence from the United Kingdom, then his proposer or seconder may by similar writing, appoint a person to attend the proceedings before the mayor; and such appointment is to be delivered to the town clerk before five p.m. of the last day on which nomination papers may be delivered (d).

Each candidate and the person appointed by him or on his behalf as above mentioned, but no other person, except for the purpose of assisting the mayor, may attend the proceedings; and each candidate and the person appointed by him may object to the nomination paper of any other person (d).

The decision of the mayor is to be given in writing; and if disallowing any such objection it is to be final; but if allowing the same it is to be subject to reversal on petition questioning the election or return (d).

The town clerk, at least four days before the election (b) is to cause the names of all persons nominated, with their places of abode and descriptions, and the names of the proposers and seconders, to be printed and placed on the door of the town hall, and in some conspicuous parts of the borough or ward for which the election is to be held (d).

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(a) 38 & 39 Vict. c. 40, s. 1 (2), App., p. ccxciii, and Sched. 1, No. 2, App., p. ccxcvii.

(b) See note (d), p. 88.

(c) 38 & 39 Vict. c. 40, s. 1 (3), App., *ut supra*.

(d) *Id.*

Any person who forges, or fraudulently defaces or destroys any nomination paper, or who delivers to the town clerk (*e*) any nomination paper, knowing it to be forged, is guilty of a misdemeanor, and is liable to imprisonment for not exceeding six months (*f*).

The nomination of a person absent from the United Kingdom is void, unless his written consent given within one month of the day of his nomination before two witnesses be produced at the time of his nomination (*g*).

The mayor is to provide polling stations, ballot boxes, ballot papers, stamping instruments and other necessary things (*h*), and his power and duty in this respect are (save as to the appointment of the alderman as returning officer for any ward) (*i*), extended to the appointment of officers for taking the poll and counting the votes recorded at the election (*k*).

No person is entitled to sign or subscribe any nomination paper, or to vote, unless his name is on the burgess roll or on the ward list respectively for the time being; but every person so entitled may demand and receive a ballot paper and may vote, unless otherwise prohibited by law (*l*).

Where more candidates are nominated than there are vacancies to be filled up, any candidate may withdraw from his candidature by notice signed by him and delivered to the town

(*e*) 38 & 39 Vict. c. 40, s. 1 (3), App., p. ccxciii.

(*f*) 35 & 36 Vict. c. 33, s. 3, App., p. ccxii; 38 & 39 Vict. c. 40, s. 1 (4), App., p. ccxciv.

Sect. 3 of 35 & 36 Vict. c. 33 (the Ballot Act, 1872), makes a returning officer guilty of any of the above mentioned offences (forging, &c., any nomination paper) liable to imprisonment not exceeding two years.

Sect. 1 (4) of 38 & 39 Vict. c. 40, makes the said section of the Ballot Act applicable to nomination papers under the later Act; and so applied, "the word (*sic*) 'returning officer' shall be taken to include town clerk *in reference to the delivery of such nomination papers*;" i.e., the delivery of forged nomination papers to him; but it does not make the penalty for forging, &c., apply to him as returning officer.

(*g*) 38 & 39 Vict. c. 40, s. 2, App., p. ccxciv.

(*h*) 35 & 36 Vict. c. 33, s. 8, and s. 20 (3), App., pp. ccxiii, ccxiv.

(*i*) See 5 & 6 Will. 4, c. 76, s. 43, App., p. xix.

(*k*) 38 & 39 Vict. c. 40, s. 3, App., p. ccxciv.

(*l*) *Id.*, s. 5, *Id.*

clerk not later than two p.m. of the day next after the last day for the delivery of nomination papers. Such notices are to take effect in the order in which they are delivered; and no notice is to take effect so as to reduce the number of candidates below the number of vacancies (a).

Any notice required to be given or published by the mayor or other returning officer or town clerk with respect to the election of councillor in any borough divided into wards may comprise the matter necessary to such notice for the several wards in the borough, and it shall not be necessary to issue a separate notice for each ward (b).

(1.) If the number of persons nominated exceed the number to be elected,

The new councillors are to be elected from the persons nominated, and from them only :

(2.) If the number be the same,

All shall be deemed elected; and the mayor, or alderman, as the case may be, is to publish a list of the names of the persons elected, not later than 11 a.m. of the day of election.

(3.) If the number be less,

They shall be deemed elected; and such of the retiring councillors who were highest on the poll at their election, or if the poll were equal, or there were no poll, then such as shall be nominated by the mayor, shall be deemed re-elected to make up the requisite number; and a list is to be published as in No. (2) :

(4.) If no persons be nominated,

The retiring councillors shall be deemed re-elected; and a list is to be published, as in No. (2) (c).

(a) 38 & 39 Vict. c. 40, s. 7, App., p. ccxcv.

(b) *Id.*, sec. 8, *Ib.*

(c) 22 Vict. c. 35, s. 8, App., p. cliv. This section is to apply to nominations of councillors, auditors and assessors duly made and allowed under 38 & 39 Vict. c. 40. See sec. 1 (4), App., p. ccxciv.

Where the borough is *not divided into wards* the election is to be held before the mayor (*d*).

In case of the death, or absence, or incapability (*e*) of the mayor to preside at the election, the council are to elect one of the aldermen to preside in his stead (*f*). The deputy appointed by the mayor (*g*) is not entitled to preside, unless specially appointed by the meeting to do so (*h*).

Where a borough *is divided into wards* (*i*), the election is to take place before one of the aldermen of the ward to be chosen by the councillors for that purpose (*k*).

In case of the illness of the alderman, or his incapacity to act, the mayor may appoint another alderman to act in his stead (*l*). And where the number of aldermen does not exceed the number of wards, the mayor, under the like circumstances, is to appoint a councillor, not being a councillor for that particular ward (*m*).

The voting at the election is to commence at nine o'clock in the forenoon, and finally to close at four in the afternoon (*n*), or it may be closed earlier if an hour shall elapse without a vote having been tendered, unless voters shall have been prevented from coming to the poll by any riot, or by any unlawful means of which the returning officer shall have notice (*o*).

Every voter is entitled to vote for as many persons as there are councillors to be chosen at that election (*p*).

The mode of voting is now prescribed by the Ballot Act (*q*). The

(*d*) 5 & 6 Will. 4, c. 76, s. 32, App., p. xv. This section required the assessors to be present, but this is rendered unnecessary by the 21st sec. of the Ballot Act (35 & 36 Vict. c. 33), App., p. ccxv.

(*e*) See *R. v. White*, L. R. 2 Q. B. 557.

(*f*) 5 & 6 Will. 4, c. 76, s. 36, App., p. xvii.

(*g*) See *ante*, p. 80.

(*h*) 16 & 17 Vict. c. 79, s. 8, App., p. cxxxviii.

(*i*) See 5 & 6 Will. 4, c. 76, ss. 39-41, App., pp. xvii, xviii.

(*k*) *Id.* s. 43, App., p. xix. This section also required the assessors to be present; but by 35 & 36 Vict. c. 33 (the Ballot Act), Sched. 4, "5 & 6 Will. 4, c. 76 \* \* \* so much of sections 43, 45, and 46 as relates to assessors" is repealed.

(*l*) 7 Will. 4 and 1 Vict. c. 78, s. 16, App., p. lxxxiv.

(*m*) 16 & 17 Vict. c. 79, s. 10, App., p. cxxxviii.

(*n*) 5 & 6 Will. 4, c. 76, s. 32, App., p. xv.

(*o*) 7 Will. 4 and 1 Vict. c. 78, s. 18, App., p. lxxxiv.

(*p*) *Id.*, sec. 32, App., *ib.*

(*q*) 35 & 36 Vict. c. 33, s. 2, App., p. ccxi; and see sec. 20, *Id.*, p. ccxiv.

votes are to be given by ballot. The ballot of each voter is to consist of a ballot paper, showing the names and description of the candidates. Each ballot is to have a number printed on the back, and to have attached a counterfoil with the same number printed on the face. At the time of voting the ballot paper is to be marked on both sides with an official mark and delivered to the voter within the polling station, and the number of the voter on the register of the voters, *i. e.*, the burgess roll or ward list (*a*), is to be marked on the counterfoil; and the voter having secretly marked his vote on the paper and folded it up so as to conceal his vote, is to place it in a closed box in the presence of the presiding officer, after having shown him the official mark at the back.

Any ballot paper which has not on its back the official mark, or on which votes are given for more candidates than the voter is entitled to vote for, or on which anything, except the number on the back, is written or marked by which the writer can be identified, shall be void and not counted (*b*).

By the 38 & 39 Vict. c. 40, s. 4 (*c*), the provisions contained in rules 16 and 19 of the Ballot Act (*d*) are not to apply to the election of councillors, auditors or assessors; but the mayor is to furnish every polling station with such number of compartments in which the voters can mark their votes screened from observation; and to furnish each presiding officer with such number of ballot papers as in the judgment of the mayor shall be necessary for effectually taking the poll in other respects in the manner provided by the Ballot Act (*e*).

Where more candidates are nominated than there are vacancies to be supplied, the mayor, at least four days before the day of the election (*f*) is to give public notice of the situation,

(*a*) 35 & 36 Vict. c. 33, Sched. 1, Part II., s. 64, App., p. ccxxv.

(*b*) Sec. 2, App., p. cxxi: It had previously been held, that if a voter voted for more persons than were to be elected, his votes were thrown away: *R. v. Leeds (Mayor)*, 7 A. & E. 963.

(*c*) App., p. ccxciv.

(*d*) 35 & 36 Vict. c. 33, Sched. 1, Part I., ss. 15 to 29, App., pp. ccxviii., ccxx., adapted to Municipal elections; Part II., s. 64, App., p. ccxxv.

(*e*) A question as to the right of a candidate to be present in a polling booth was raised in *Clementson v. Mason*, tried at Manchester before *Denman, J.*; S. C. in C. P.; H. T. 1875 (*Times*, Jan. 25, 1875). See 35 & 36 Vict. c. 33, Sched. 1, r. 51, App., p. ccxxiv.

(*f*) See note (*d*), p. 88.



division and allotment of polling places and of the description of persons entitled to vote at the several polling stations (*g*).

No inquiry is permitted at the election as to the right of any burgess to vote, except the following questions, which the presiding officer, if required to do so by two burgesses entitled to vote, is to put to the voter at the time he delivers the votingpaper:

“Are you the person whose name appears as A. B. on the burgess roll now in force for this borough, being registered therein as rated for property described to be situated in — ?

“Have you already voted at the present election?” (*h*).

If the presiding officer asks any other question than the foregoing from a corrupt motive, the Court of Queen’s Bench (*i*) will, it seems, grant a criminal information against him. In one case a rule *nisi* for a criminal information had been obtained against a presiding officer who had questioned a voter as to his having signed another paper in favour of the other side; the rule was discharged, as it was not conclusively shown that the presiding officer had been actuated by corrupt motives, but only upon the terms of the defendant’s paying all the costs (*k*).

This case was decided under the former Acts; but it is probable, that such a question would now be considered a direct violation of the provisions of the Ballot Act.

If any person wilfully makes a false answer to any of the above questions, he is liable to be indicted for a misdemeanor (*l*).

Personating, or procuring another person to personate, a voter is also a misdemeanor (*m*).

(*g*) 38 & 39 Vict. c. 40, s. 4, App., p. .

(*h*) 5 & 6 Will. 4, c. 76, s. 34, App., p. xvi. The first question under this section was:—

“Are you the person whose name is signed as A. B. to the voting paper now delivered in by you?” But this question is repealed: 35 & 36 Vict. c. 33, Sched. 4.

(*i*) See note at the beginning of the volume.

(*k*) *R. v. Chapman*, T. T. 1837; Rawlinson’s Municipal Corporation Acts, 6th Ed., p. 44.

(*l*) 5 & 6 Will. 4, c. 76, s. 34, App., p. xvi. Similar provisions are contained in the 58th section of the Parliamentary Reform Act, 2 & 3 Will. 4, c. 45. In *R. v. Dodsworth*, 8 C. & P. 218, S. C. 2 M. & Rob. 72, the form of the indictment under that Act is given.

(*m*) 22 Vict. c. 35, s. 9; *R. v. Marsh*, 6 A. & E. 250 (see the form of the indictment, *Id.* 250, *n*); *R. v. Thompson*, 2 M. & Rob. 355. See also *R. v. Ellis*, C. & Marsh, 564; *R. v. Spalding*, *Id.* 565.

All the proceedings at the ward elections are to be conducted in the same manner as elections for the whole borough; and the alderman is to have the same powers as to the ward elections as the mayor has at elections for the whole borough (a).

In the ward elections the burgesses are entitled to vote for that ward in which the property for which they are rated is situated (b).

If a burgess is rated for premises in more than one ward he is to select for which he will vote (b).

There is no time fixed by the Act within which the burgess is to make such election, as there is in the case of a councillor elected for more than one ward (c). But if on the revision of the burgess list a burgess so situated does not then make his election, the mayor will be justified in expunging his name from all the lists but one, even though the burgess should protest against this being done (d).

If the name of a burgess has been inadvertently left on more than one list and he has voted for one ward he thereby has made his election, and cannot afterwards vote for another ward until there has been a fresh registration (e). But the first vote is good (f).

If a person is elected a councillor for more than one ward, he is to choose within three days after notice for which ward he will serve; and in default of his doing so, the mayor is to declare for which ward he shall serve (g).

In the event of any extraordinary vacancy occurring in the office of councillor, the mayor is to fix a day, not later than fourteen (h) days after the notice shall have been given to the

(a) 5 & 6 Will. 4, c. 76, s. 43, App., p. xix.

(b) *Ib.* sec. 44, App., *Ib.*

(c) See below.

(d) *R. v. Cambridge (Mayor)*, 1 E. & E. 210; S. C. 28 L. J. Q. B. 10. See also per *Blackburn, J.*, in *R. v. Harrald*, 42 L. J. Q. B. 211.

(e) *R. v. Tugwell*, L. R. 7 Q. B. 704; 37 L. J. Q. B. 275. See the opinion of the Attorney-General cited in *R. v. Morton*, 4 Q. B. 148. See also *R. v. Cambridge (Mayor)*, *ut supra*.

(f) *R. v. Harrald*, L. R. 8 Q. B. 418; 42 L. J. Q. B. 211.

(g) 5 & 6 Will. 4, c. 76, s. 46, App., p. xx.

(h) 38 & 39 Vict. c. 42, s. 9, App., p. ccxcv. See note (d), p. 88.

mayor or town clerk by any two burgesses (*i*), on which a fresh election is to take place; such election is to be conducted in the same manner as in the case of an ordinary election, and the person who shall be elected at such occasional election is to remain in office till the time when the person in whose room he has been chosen would regularly have gone out of office (*k*).

If a councillor has been unseated under the Corrupt Practices (Municipal Elections) Act, 1872 (*l*), a new election is to be held forthwith as in the case of an extraordinary vacancy (*m*).

In case more than one extraordinary vacancy has to be supplied in this manner, the councillor elected by the smallest number of votes is to be taken as elected in the room of the party who would regularly have first gone out of office; and the councillor elected by the next smallest number in the room of him who would have next gone out; and so with respect to the others (*n*).

If an election is held to supply ordinary and extraordinary vacancies at the same time, care must be taken to preserve a distinction between the two classes of candidates throughout the whole proceeding; indeed, it seems doubtful whether such a double election can be held at the same time.

In the case of *R. v. Rowley* (*o*) an election had been held to supply one extraordinary and three ordinary vacancies in the council of the borough of L. Two sets of candidates (each consisting of four) were proposed. The votes for the successful candidates were given on papers, each stating the names of the four, but *not distinguishing the vacancy which any one was intended to fill*. It was held by the Court of Queen's Bench that the election was bad. But Lord Denman, C. J., and Patteson, J., held that such an election, if regular in other respects, would not be bad, because held to supply both ordinary vacancies and an extraordinary vacancy made some

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(*i*) 16 & 17 Vict. c. 79, s. 11.

(*k*) 5 & 6 Will. 4, c. 76, s. 47, App., p. xx; 7 Will. 4 and 1 Vict. c. 78, s. 11, App., p. lxxxiii.

(*l*) 35 & 36 Vict. c. 60, App., p. ccxxviii.

(*m*) See sec. 24, App., p. ccxl.

(*n*) 7 Will. 4 and 1 Vict. c. 78, s. 11, App., p. lxxxiii.

(*o*) 3 Q. B. 143.

time before; and the latter learned judge said, that an elector might give votes for all the candidates on the same paper, only making the proper distinction as to the vacancies to be supplied.

The court made absolute a rule for a *quo warranto* information against one of the four who had been so elected to fill one of the ordinary vacancies; and the information was tried before Tindal, C. J., when the defendant endeavoured to show that the voters understood at the time of the election which persons were candidates to fill the ordinary and the occasional vacancies respectively, and that they gave their votes accordingly. The learned judge told the jury that the information which enabled the presiding officer to declare the defendant elected to fill an ordinary, and not the occasional vacancy, was by law to be derived from the voting papers alone. The verdict was given for the Crown, but a bill of exceptions was tendered on behalf of the defendant to the judge's direction.

Upon a writ of error in the Exchequer Chamber (*a*), it was held that the direction was right; and several of the judges expressed a strong opinion that councillors to fill occasional and regular vacancies ought not to be chosen at one and the same election (*b*).

If from any cause the election of a councillor *has not taken place* within the time limited by the statute, or if an election afterwards *becomes void* by default or accident, the Court of Queen's Bench (*c*) may award a *mandamus* in the same manner as under the 11 Geo. 1, c. 4 (*d*), in the event of there being no election of mayor or other corporate officers (*e*).

The rule for the *mandamus* in such a case must be directed to the mayor, &c., of the borough (according to the corporate title), even though no mayor were actually in existence at the time (*f*).

The court will grant a *mandamus* to proceed to an election,

(*a*) *Rowley v. The Queen*, 6 Q. B. 668.

(*b*) See also *R. v. Winchester (Mayor)*, 7 A. & E. 215; *R. v. Leeds (Mayor)*, *Id.*, 963.

(*c*) See note at the beginning of the volume.

(*d*) App., Part II., p. cclxvi.

(*e*) 7 Will. 4 & 1 Vict. c. 78, s. 26, App., p. lxxxv.

(*f*) *R. v. Pembroke (Corp.)*, 8 Dowl. P. C. 302.

although one has taken place *de facto*, if it appears to be merely colourable, or a nullity, or otherwise void (*g*).

It has been held that an election was not a nullity within this section (*h*), where a notice had been given of two vacancies instead of one, and a majority of burgesses had voted for two candidates jointly; as a third candidate who was chosen by single votes was held to be duly elected (*i*).

The *qualifications* for a councillor are as follows:—

1. Being entitled to be “on the burgess list of the borough.”

There is considerable ambiguity in this sentence.

In the first place it is doubtful what is exactly meant by “the burgess list of the borough.” As before stated “a burgess list” is made out for each *parish*, and from these lists the burgess *roll* for the whole *borough* is made out (*k*). In *R. v. Harvey* (*l*) it seems to have been assumed that the “burgess list” here spoken of meant the “burgess roll” (*m*).

Secondly, it is not required that the party should be actually on the list, or roll; but merely that he should be *entitled* to be so. This is again rather a doubtful phrase. If a person is improperly omitted from the list, he may, as has been seen, claim to have his name inserted; and if this claim is refused, he may apply to the Queen’s Bench (*n*) for a *mandamus* to insert his name in the burgess roll (*o*). It has been held, however, in an action of debt for penalties against a person for acting as councillor without being qualified (*p*), that although his name had been expunged from the burgess list of that year, on the revision, yet, as he was duly qualified in all other respects, he was entitled to be on the list within the meaning of this

(*g*) See *The case of the Borough of Tintangel*, 2 Stra. 1003; *R. v. Godwin*, Doug. 382; *R. v. Banks*, 3 Burr. 1454; *R. v. Cambridge (Mayor)*, 4 Burr. 2008. See also *R. v. Winchester (Mayor)*, 7 A. & E. 215.

(*h*) 7 Will. 4 & 1 Vict. c. 78, s. 26, *ut supra*.

(*i*) *R. v. Leeds (Mayor)*, 7 A. & E. 964.

(*k*) *Vide ante*, pp. 73, 83.

(*l*) 3 Q. B. 475.

(*m*) See 5 & 6 Will. 4, c. 76, ss. 15, 22. But see sec. 17, and the forms in Sched. (D).

(*n*) See note at the beginning of the volume.

(*o*) *Ante*, pp. 76, 84.

(*p*) Under 5 & 6 Will. 4, c. 76, s. 53, App., p. xxiii.

section (a). Where a councillor was in fact on the burgess roll, the Court refused to question his title on a motion for a *quo warranto* supported by affidavits showing that he had not any of the qualifications to be on the roll; as these questions might have been gone into on the revision of the burgess lists (b).

2. Residing within fifteen miles of the borough, if otherwise qualified to be on the burgess roll, although by reason of his residence being beyond seven miles he would not be entitled to be on the burgess roll (c).

3. Possessing real or personal estate to the following amount:—

In boroughs divided into four or more wards, £1,000, or being rated to the poor-rate upon the annual value (d) of £30 at least.

In boroughs not divided into wards at all, or divided into less than four wards—£500; or being rated to the poor-rate upon annual value of £15 at least.

It seems that if a borough originally consisting of less than four wards, was afterwards divided into a greater number the qualification of the councillor would be increased; but by the 32 & 33 Vict. c. 55, s. 4 (e), it is enacted, that if such a division should take place after the passing of the Act (2nd August, 1869), the qualification shall not be increased or altered in consequence of such division.

4. The having been duly nominated (f).

The *disqualifications* are as follows:—

1. Being in holy orders, or the regular minister of any Dissenting congregation: (g)

A person in holy orders may now relinquish his clerical office (h), and would then be eligible.

(a) *Whalley v. Bramwell*, 15 Q. B. 775; see also *R. v. Dixon*, *Id.* 33.

(b) *Exp. Hindmarsh*, L. R. 3 Q. B. 12.

(c) 32 & 33 Vict. c. 55, s. 3, App., p. ccviii.

(d) *I. e.*, the "rateable value" and not the "gross estimated rental:" *Baker v. Marsh*, 4 E. & B. 144.

(e) App., p. cviii.

(f) 22 Vict. c. 35, s. 8, *vide ante* p. 89.

(g) 5 & 6 Will. 4, c. 76, s. 28, App., p. xiv.

(h) 33 & 34 Vict. c. 91.

Where a deacon of a Baptist chapel had been invited to become the minister of an Independent chapel, but had declined, being, in fact, by the terms of the trust deed ineligible for the appointment, but had preached at the last mentioned chapel for three months and had agreed to do so for six months longer, it not appearing that he received any salary for so doing, it was decided that he was not a "regular minister" so as to be disqualified from being elected a councillor (*i*).

2. Holding any office or place of profit, except that of mayor, in the gift or disposal of the council (*k*); such as that of town clerk (*l*), treasurer (*l*), registrar of a court of record (*m*) and such like.

It has been enacted that the office of sheriff, which would otherwise have been an office of profit under this section (*n*), is not to be so deemed, so as to create any disqualification under this Act (*o*).

A person had been appointed by the council inspector for carrying out the provisions of the Cattle Diseases Prevention Act (29 & 30 Vict. c. 2), but the resolution by which he had been appointed provided that his duties and salary were to be thereafter assigned. He was nominated councillor, no such assignment having been made; he then wrote to resign his appointment, but was elected before his resignation was accepted. The Court held that he was not the holder of an office of profit, and intimated an opinion that even if he had been the resignation was sufficient (*p*).

If the clerk to the justices is elected a councillor, which he may be, he cannot be continued in the former situation (*q*).

It does not appear that the *partner* of a person holding a place of profit is disqualified.

(*i*) *R. v. Oldham*, L. R. 4 Q. B. 290.

(*k*) 5 & 6 Will. 4, c. 76, s. 28, App., p. xiv.

(*l*) See *Id.*, s. 58, App., p. xxiv.

(*m*) *Id.*, sec. 119, App., p. li.

(*n*) *Id.*, sec. 61, App., p. xxvi.

(*o*) 5 & 6 Vict. c. 104, s. 8, App., p. cix.

(*p*) *R. v. Barford*, Q. B., June 13, 1868, Rawl. Mun. Cor. Acts, 6th Ed., p. 35.

(*q*) See 5 & 6 Will. 4, c. 76, s. 102, App., p. xliv.

3. Having directly or indirectly by himself or partner any share or interest in any contract or employment with, by or on behalf of the council (*a*).

But it is provided that a person is not to be disqualified by reason of his being a proprietor or shareholder of any company which shall contract with the council for lighting the borough, or supplying it with water, or insuring any part of it against fire (*a*).

The words "contract or employment" are not confined to such contracts only as partake in some degree of the nature of employments, as contracts for work, or the furnishing of supplies; but the word "contract" is to receive its ordinary legal construction (*b*).

It had been held, therefore, that a lease between the mayor, &c., of a corporation and A., containing the usual covenants on the part of the lessee, was a contract within the meaning of the Municipal Corporation Act, which disqualified A. from being a councillor of the borough (*c*). And where a lease was granted by a corporation to a trustee for a councillor, it was also held a disqualification (*d*).

But as much inconvenience would have resulted from this strict though undoubtedly correct interpretation of the statute, it has since been enacted (*e*), that the word "contract" in the above section shall not extend to any lease, sale or purchase of any lands, tenements, or hereditaments, or to any agreement for any such lease, &c., or for the loan of money, or to any security for the payment of money only.

A contract made with the corporate body before the passing of the Municipal Act, if in existence afterwards, will act as a disqualification (*f*).

(*a*) 5 & 6 Will. 4, c. 76, s. 28, App., p. xiv.

(*b*) Per Cur. in *R. v. York*, 2 Q. B. 847, 849.

(*c*) *R. v. York*, *ut supra*.

(*d*) *Simpson v. Ready*, 12 M. & W. 736.

(*e*) 5 & 6 Vict. c. 104, s. 1, App., p. cviii.

(*f*) *R. v. York*, *ut supra*. See the following decisions upon similar provisions in other Acts of parliament:—under the Poor Law Act (55 Geo. 3, c. 137, s. 6): *West v. Andrews*, 5 B. & A. 238; 1 B. & C. 77; *Proctor v. Mainwaring*, 2 B. & A. 145; *Henderson v. Sherborne*, 2 M. & W. 236; *Pope v. Backhouse*, 8 Taunt. 239; *Barber v. Waite*, 1 A. & E. 514; —under the General Turnpike Act (3 Geo. 4, c. 126, s. 65); *Towsey v. White*, 5 B. & C. 125; —under a Local Paving Act, *Charlesworth v. Rudgard*, 1 C. M. & R. 498.



If a person has entered into a contract with the council, though not under seal, as it should have been, and he has been employed by them in respect of such contract, he is disqualified from being elected councillor (*g*).

Where a corporation were constituted by their council the local board of health of a borough (*h*) and A. sold materials to B. who had contracted with the council as such board of health to perform certain works, it was held (even assuming the contract with the board to be a contract with the council, which was not decided) that A. had not such an interest in the contract as to disqualify him (*i*).

It has been enacted that a proprietor of a newspaper is not to be deemed to have an interest in a contract or employment with a council by reason only of advertisements inserted in such newspaper relating to the affairs of the borough or council (*k*); nor a proprietor of shares in any railway company, or company incorporated by statute (*l*).

4. A fourth ground of disqualification consists in its having been found by the report of an election court acting under the provisions of the "Corrupt Practices (Municipal Elections) Act, 1872" (*m*), that any corrupt practice has been committed by or with the knowledge and consent of any candidate at an election. Such disqualification is to last for seven years after the date of the report (*n*).

Any person who on an indictment or information is found guilty of any corrupt practice at an election, or who in any action or proceeding is adjudged to pay a penalty or forfeiture for any corrupt practice at an election is subject to a similar disqualification (*o*).

But if any witnesses on whose testimony such person has become disqualified are, on the prosecution of such person, afterwards convicted of perjury in such testimony, the superior

(*g*) *R. v. Francis*, 18 Q. B. 526.

(*h*) See The Public Health Act, 1848, and 13 & 14 Vict. c. 108.

(*i*) *Le Feuvre v. Lankester*, 3 E. & B. 530.

(*k*) 15 Vict. c. 5, s. 1, App., p. cxxxiv.

(*l*) 32 & 33 Vict. c. 55, s. 5, App., p. cviii.

(*m*) 35 & 36 Vict. c. 60, App., p. ccxviii.

(*n*) *Id.*, sec. 4, sub-sec. (1), App., p. ccxxxi.

(*o*) *Id.*, sec. 4. (*lb*.)

court (*i.e.*, the Court of Common Pleas) (*a*) on the motion of such person, may order that such disqualification shall thenceforth cease and determine (*b*).

“Corrupt practices” consist in the offences of “bribery,” “treating,” “undue influence,” and “personation” as defined in the Acts relating to parliamentary elections (*c*).

“Bribery” consists in—

1. Directly or indirectly by a person himself or by any other person on his behalf giving (*d*), lending, or agreeing to give, &c., or offering (*e*), promising to procure or endeavouring to procure, any money or valuable consideration, to or for any voter, or any person on behalf of any voter, or to or for any other person in order to induce any voter to vote, or refrain from voting; or corruptly doing any such act on account of such voter having voted (*f*) or refrained from voting (*g*).

2. Directly or indirectly, &c., giving or procuring or agreeing, &c., or offering, &c., to procure any office, place, or employment (*h*) to or for any voter, &c., &c. (*g*);

3. Directly or indirectly, &c., making any such gift, loan, offer, promise, procurement or agreement to or for any person in order to induce such person to procure, or endeavour to procure the return of any person or the vote of any voter (*g*).

4. Upon or in consequence of any such gift, &c., procuring or engaging, promising or endeavouring to procure such return or vote (*g*).

5. Advancing or paying or causing to be paid any money to or to the use of any other person with the intent that such money or any part thereof shall be expended in bribery at an election; or knowingly paying, &c., to any person in discharge or repayment of any money wholly or in part so expended (*g*).

(*a*) 35 & 36 Vict. c. 60, s. 2 (1), App., p. cccxix.

(*b*) *Id.*, s. 4, sub-sec. (1), App., p. cccxx.

(*c*) See 17 & 18 Vict. c. 102; 21 & 22 Vict. c. 87; 26 & 27 Vict. c. 29.

(*d*) See *Henslow v. Fawcett*, 3 A. & E. 51.

(*e*) See *Harding v. Stokes*, 2 M. & W. 233.

(*f*) See *Huntingtower v. Gardiner*, 1 B. & C. 297.

(*g*) 17 & 18 Vict. c. 102, s. 2.

(*h*) See *Harding v. Stokes*, 1 M. & W. 354.

6. (Being a voter) before or during an election, directly or indirectly, &c., receiving, agreeing or contracting for any money, gift, loan or valuable consideration, office, place or employment for himself or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting (i).

7. After an election, directly or indirectly, &c., receiving any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote, &c. (i).

“Treating” consists in a candidate’s corruptly by himself or by or with any person, or by any other ways or means on his behalf at any time before, during or after an election, directly or indirectly, giving or providing or causing to be given or provided, or being accessory to the giving, &c., or paying wholly or in part any expenses incurred for any meat, drink, entertainment or provision to or for any person, in order to be elected or for being elected, or for the purpose of corruptly influencing such person or any other person to give or refrain from giving his vote; or on account of such person having voted or refrained, &c., or being about to vote, &c. (k).

If a candidate or an agent for a candidate agrees to pay for the conveyance of a voter to or from the poll, he is liable on summary conviction before two justices to a penalty not exceeding £5 (l), but as this offence is not declared to be a “corrupt practice” such conviction will not act as a disqualification.

“Undue influence” consists in directly or indirectly by himself, &c., making use of, or threatening to make use of, any force, violence, or restraint, or inflicting or threatening the infliction by himself or by or through any other person, of any injury, damage, harm, or loss, or in any other manner practising intimidation upon or against any person in order to

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(i) 17 & 18 Vict. c. 102, s. 3.

(k) *Id.*, s. 4.

(l) 35 & 36 Vict. c. 60, s. 8, App., p. cccxxi.

induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at an election, or by abduction, duress, or any fraudulent device or contrivance, impeding, preventing, or otherwise interfering with the free exercise of the franchise of any voter; or thereby compelling, inducing or prevailing on any voter either to give or to refrain from giving his vote at an election (a).

“Personation” consists in applying for a ballot paper in the name of some other person, whether living or dead (b), or of a fictitious person; or, having voted once at an election applying at the same election for a ballot paper in his own name (c).

An uncertificated bankrupt is not disqualified from being elected a councillor (d) but if any person while holding that office is declared bankrupt or becomes insolvent or enters into any arrangement or composition with his creditors under the Bankruptcy Act, 1869 (e), whether by deed or otherwise (f), he immediately becomes disqualified and loses his office, although he may be re-elected upon his obtaining his certificate, or paying his debts in full (g).

In the case of *The King v. The Mayor, &c., of Oxford* (h), a question was raised, whether, if a party were elected a councillor, being duly qualified at the time of his election, and his name were afterwards improperly omitted in the burgess list before his time of service as a councillor was expired, such omission would vacate the office of councillor; but the question was not decided.

In the subsequent case of *The Queen v. Phippen* (i), where a councillor had during his term of office been put out of the

(a) 17 & 18 Vict. c. 102, s. 5.

(b) See *Whiteley v. Chappell*, L. R. 4 Q. B. 147.

(c) 35 & 36 Vict. c. 33, s. 24, App., p. ccxv.

(d) *R. v. Chitty*, 5 A. & E. 609.

(e) 32 & 33 Vict. c. 71.

(f) *Id.*, c. 62, s. 21, App., p. ccix.

(g) 5 & 6 Will. 4, c. 76, s. 52, App., p. xxii; see *Hardwick v. Brown*, L. R. 8 C. P. 406.

(h) 6 A. & E. 349; see also *R. v. Winchester (Mayor, &c.)*, 7 A. & E. 215.

(i) 7 A. & E. 966.

burgess roll by the overseers for alleged non-payment of rates, but continued to exercise the office, the court refused upon affidavit of these facts and of the alleged default, to issue a *mandamus* to the mayor or alderman of the ward to proceed to a new election; as the vacancy must be first ascertained by judgment on a *quo warranto* information (*k*).

If any person acts as councillor or other officer without being duly qualified, or after he shall cease to be qualified, he is liable to a penalty of £50, to be recovered in an action in one of the superior courts, such action to be commenced within three calendar months after the commission of the offence (*l*).

The action can only be brought by a burgess (*l*), but the declaration need not aver that the plaintiff is one (*m*).

It is necessary also that the plaintiff should serve a notice "in writing personally upon the party" within fourteen days after the commission of the offence (*l*). From the wording of the Act it is not very clear whether the service should be made *by the plaintiff* in person, or *upon the defendant* in person; but the latter construction is the more consistent with the intention of the Act.

If a party is actually enrolled on the burgess-roll for the time being, he will not be liable to the penalty for acting as councillor or other officer, on the ground that he was not entitled to be on the burgess list (*n*) of the borough (*o*).

All the acts of any person actually in possession of the office of councillor, or any other, are declared to be valid notwithstanding his disqualification (*p*).

Some doubts had been entertained as to whether this provision extended to the case of an election of a corporate officer, held before a presiding officer who had not a good title to his

(*k*) See also *R. v. Bristol (Mayor)*, 1 W. W. & H. 93.

(*l*) 5 & 6 Will. 4, c. 76, s. 53, App., p. xxiii.

(*m*) *Simpson v. Ready*, 12 M. & W. 736.

(*n*) As to these words, see *supra*, p. 99.

(*o*) 6 & 7 Will. 4, c. 104, s. 7, App., p. lxxiii.

(*p*) 5 & 6 Will. 4, c. 76, s. 53, App., p. xxiii. See also 35 & 36 Vict. c. 60, s. 23, App., p. ccl.

office. It was, however, enacted by a subsequent statute (a) that no such election shall be liable to be questioned by reason of any defect on account of title in the presiding officer, provided he were at the time *de facto* in possession of the office giving the right to preside.

This may be a convenient place to consider briefly the doctrine of elections that are invalidated by the votes of the electors being thrown away; which doctrine, it may be stated once for all, applies equally to the elections of all other officers besides councillors.

The general rule may be stated thus:—

If a candidate for an office is ineligible at the time of the election by reason of any disqualification, and public notice of such disqualification is given at the election, all votes given for that candidate after such notice are thrown away; and if there are other eligible candidates, the one who has the largest number of votes will be duly elected (b).

If, however, the disqualification of the candidate who has the largest number of votes is capable of being removed, and is in fact removed before the other candidate is sworn in, the title of the former becomes perfect (c).

If the incapacity of a candidate is not announced till after the proceedings at the election have commenced, and votes have been taken, the votes given for the unqualified candidate before such announcement are not thrown away: another candidate, therefore, whose votes upon the whole poll do not exceed in number those votes which were given for the unqualified candidate before notice of his incapacity, will not be considered as duly elected (d).

With regard to the notice required, Lord Mansfield is reported to have said in one case (e), that “if the disqualification is

(a) 7 Will. 4 and 1 Vict. c. 78, s. 1, App., p. lxxx. See *R. v. Slythe*, 6 B. & C. 244.

(b) *R. v. Hawkins*, 10 East, 210; S. C. Aff. in *Dom. Proc.* 2 Dow, 124. See also *R. v. Boscawen*, cit. 2 Burr. 1021; *Taylor v. Bath (Mayor)*, Cowp. 537; *R. v. Parry*, 14 East, 549; *Oldknow v. Wainwright*, 2 Burr. 1017; *R. v. Hiorns*, 7 A. & E. 960; *R. v. Coaks*, 3 E. & B. 249.

(c) *R. v. Parry*, 14 East, 549.

(d) *R. v. Bridge*, 1 M. & S. 76.

(e) *R. v. Blissel*, Roe on Elections, 279.

notorious it elects the other party ;” but it has been well remarked that the answer to this position appears to be, that the disqualification, though notoriously existing before the poll, may have been got rid of at and even after its opening (*f*). The dictum in question, it is to be observed, is not to be found in another report of the same case (*g*).

In *R. v. Hiorns* (*h*) a question was raised but not decided, whether, where a party was notoriously disqualified by statute at the time of the election, the votes given for him were thrown away, as where an assessor was elected a councillor, being disqualified from being so elected by the operation of the 15th section of the 7 Will. 4 and 1 Vict. c. 78 (*i*).

When the election of councillors is concluded (*i.e.*, after the close of the poll) the ballot boxes are to be sealed up so as to prevent the introduction of additional ballot papers, and are to be taken charge of by the returning (or presiding) (*k*) officer ; *i.e.*, the mayor ; who is to examine the voting (or ballot) papers (*l*) ; and to declare what persons have been elected (*m*). The duty of the mayor in this respect is purely ministerial, and it seems he is not required to notice whether the persons elected are qualified or not (*n*).

The method of ascertaining the result of the election is under the Ballot Act as follows :—

The mayor, in the presence of the agents, if any, of the candidates, as may be in attendance, is to open the ballot boxes and ascertain the result of the poll by counting the votes given to each candidate ; and is forthwith to declare to be elected the candidates to whom the majority of votes have been given. The decision of the presiding (*k*) officer as to any question arising in respect of any ballot paper shall be final, subject to

(*f*) Rogers on Elections, 227.

(*g*) Doug. 328.

(*h*) 7 A. & E. 960.

(*i*) App., p. lxxxiii, see also, *R. v. Derby (Councillors)*, 7 A. & E. 419 ; *R. v. Tewkesbury (Mayor)*, L. R. 3, Q. B. 629.

(*k*) 35 & 36 Vict. c. 33, s. 20, sub-sec. 1, App., p. cexiv.

(*l*) *Id.*, sec. 2, App., p. cexi.

(*m*) 5 & 6 Will. 4, c. 76, s. 35, App., p. xvi ; all of this section that relates to assessors is repealed by 35 & 36 Vict. c. 33, Sched. 4.

(*n*) See by *Patteson J.*, in *R. v. Ledgard*, 8 A. & E. 545.

reversal on petition questioning the election (a), *i.e.*, any proceeding in which a municipal election can be questioned (b).

In the case of an equality of votes, the mayor is to choose which person shall be deemed to be elected (c).

All ballot papers are to be delivered by the mayor to the town clerk (d).

Under the Municipal Corporation Act the mayor (or in boroughs divided into wards, the alderman) (e) was to publish a list of the names of the persons elected, not later than 2 p.m. on the day next but one after the day of the election (f); but this enactment is repealed by the Ballot Act (g), which, in the case of parliamentary elections, requires the returning officer after counting the votes "forthwith" to declare which candidate is elected (h). It has been doubted whether this enactment applies to municipal elections; on the ground that sec. 20, of the Ballot Act (i) provides that none of its provisions shall apply to municipal elections except the mode of taking the poll (k); but that section enacts that such provisions of the Act "as relate to or are concerned with a poll at a parliamentary election" shall be applicable, with certain modifications "to a poll at a contested municipal election;" and it would seem that a declaration of the result of a poll might fairly be considered as something relating to or concerned with such poll. At any rate it would be advisable that the returning officer should make the declaration as speedily as may be.

Where under the Municipal Corporation Act the publication had been duly made, and after two o'clock the officer, whose duty it was to make the return, discovered a supposed error in

(a) 35 & 36 Vict. c. 33, s. 20, sub-sec. 1, App., p. cxxiv.

(b) *Id.*, sub-sec. 2, App., p. cxxiv, and see further as to the forms, &c., *Id.*, Sched. 2, App., p. cxxvi.

(c) 5 & 6 Will. 4, c. 76, s. 35, App., p. xvi; all of this section that relates to assessors is repealed by 35 & 36 Vict. c. 33, Sched. 4.

(d) *Id.*, Sched. 1, ss. 38 and 64, sub-sec. (b).

(e) 5 & 6 Will. 4, c. 76, s. 43.

(f) *Id.*, s. 35.

(g) 35 & 36 Vict. c. 33, Sched. 4, repealing 5 & 6 Will. 4, c. 76. "Sec. 35 from 'and the mayor shall cause the voting papers' to end of the section."

(h) Sec. 2, App., p. cxi.

(i) App., p. cxxiv.

(k) Rawlinson's Corporation Act, 6th Ed., p. 46, n. (3).



counting the votes, and signed and published a second list, it was held that such second publication was invalid, and that the party whose name was first published was duly elected (*l*); and the Court refused a *mandamus* to a corporation to make publication (which had been omitted) or swear in the new burgesses, as having no authority to do so. But a rule absolute in the first instance to proceed to a new election (*m*) was afterwards granted (*n*).

No person elected as councillor is to act in that capacity, (except for the purpose of administering the declaration therein mentioned), until he shall have made and subscribed before two aldermen or councillors a declaration that he accepts the office, and that he will duly and faithfully fulfil the duties thereof (*o*).

The aldermen and councillors are by the same section authorized and required to administer the declaration to each other. But this administering of the declaration is not a purely ministerial act; and if a party elected as councillor is known to be disqualified, the aldermen or the other councillors may, and it seems ought to, refuse to administer the declaration to him; and such disqualification would be an answer to a *mandamus* to the alderman or councillors on their refusal to administer such declaration (*p*).

Where a borough officer has administered the declaration to a person elected as councillor, he cannot afterwards be the relator in a *quo warranto* information against the party elected for exercising the office (*q*).

When a party elected to the office of councillor has made the requisite declaration the office becomes full *de facto*,

(*l*) *R. v. Leeds (Mayor, &c.)*, 11 A. & E. 512. See further, *R. v. Winchester (Mayor)*, 7 A. & E. 215; *R. v. Derby (Councillors)*, *Id.*, 419; *R. v. Hiorns, Id.*, 960.

(*m*) Under 7 Will. 4 and 1 Vict. c. 78, s. 26, App., p. lxxxv.

(*n*) *In re Carmarthen (Corp.)*, Q. B., M. T. 1845, cit. Rowl. Corp. Act, 6th Ed., p. 283.

(*o*) 5 & 6 Will. 4, c. 76, s. 50, App., p. xxi.

(*p*) By Coleridge, J., in *R. v. Greene*, 2 Q. B. 460, 465.

(*q*) *R. v. Greene, ut supra*. As to other cases in which a party is precluded from being relator by reason of his having concurred in the election, *vide post*.

and the right to such office can be questioned only by a *quo warranto* (a).

Every person elected councillor is bound, if duly qualified for the office, to accept the same, by making and subscribing the declaration before-mentioned within five days after notice of his election, or to pay a fine to be fixed by a bye-law of the council (b) not exceeding £50 (c).

The notice required must be a regular notice; such as that the party was actually present when his election was announced, or was apprised of the fact by some official authority. Where, therefore, a party was elected to a borough office during his absence from the borough and took the declaration within five days after his return, not having received notice of the election from any official source before his return, it was held sufficient; although he had been previously made aware that he was elected, by family letters and the congratulations of friends whom he casually met (d).

It seems that if the council neglect to make a bye-law fixing the amount of fine in such cases, they may be compelled to do so by *mandamus* (e).

If the fine is not paid, any borough justice, upon the application of the council, may issue a distress warrant to recover the same (c).

The statute contains certain exemptions from the liability to pay the fine; namely, in the case of any person disabled by lunacy, or imbecility of mind, or by deafness, blindness or other permanent infirmity of body. It also provides that every person above the age of sixty-five, or who shall have already served the same office or paid the fine for not accepting it within five years from his re-election, shall be exempt from accepting or serving the office, if such exemption is claimed within five days after notice of the election (f). It further

(a) *R. v. Winchester (Mayor, &c.)*, 7 A. & E. 215. See also *R. v. Swyer*, 10 B. & C. 486; *R. v. Stoke Damerel*, 5 A. & E. 584, 589; *Frost v. Chester (Mayor)*, 5 E. & B. 531.

(b) See 5 & 6 Will. 4, c. 76. s. 90, App., p. xxxviii, as to the power and mode of making bye-laws.

(c) 5 & 6 Will. 4, c. 76, s. 51, App., p. xxi.

(d) *R. v. Preece*, 5 Q. B. 94; D. & M. 156.

(e) See *Vanacher's Case*, 1 Ld. Raym. 499; 5 Mod. 440.

(f) As to the sufficiency of notice, see above.

provides that no military, naval or marine officer in the service of the Crown, on full pay, nor any officer or other person employed and residing within any of her Majesty's dockyards, victualling establishments, arsenals or barracks, shall be compelled to accept any office in any borough (*g*).

The 8th section of the 6 & 7 Will. 4, c. 104 (*h*), contained a further proviso, that no person enabled to make an affirmation instead of taking an oath (*i*) should be liable to any fine for non-acceptance of office in any borough by reason of his refusal *on conscientious grounds*, to take an oath or make any declaration required by the Municipal Corporation Act, or *to take upon himself the duties of such office*.

Conscientious objections to taking an oath had been recognized by the legislature on various occasions, as in the cases of Quakers, Moravians and Separatists (*k*); but a conscientious objection to take upon oneself the duties of an office is, it is believed, quite a novel, as it certainly is a very vague ground, of exemption. Who is to judge of the conscientiousness of the objection? Could a party duly qualified and elected to fill a corporate office relieve himself from the performance of the duties or the disagreeable alternative of paying a fine, upon a statement that he conscientiously believed that he was not fit to discharge the duties of the office? Possibly the framers of the Act may have had in their view the cases of persons who, on religious grounds, object, not only to take oaths themselves, but also to administer them to others, as they might be called on to do in the ordinary discharge of their duties.

Independently of the fine, it seems that a party duly elected was liable, at common law, to be compelled to serve by *mandamus*; and it has been held that the payment of a fine, imposed by a bye-law, for not serving a corporate office was no answer to a *mandamus*, where the bye-law did not state that the payment of the fine was in lieu of service (*l*). As the 51st section of the Municipal Corporation Act, however, says that the payment of the fine shall be *in lieu* of the acceptance of the

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(*g*) 5 & 6 Will. 4, c. 76, s. 51, App., p. xxi. There is generally a similar provision in the Annual Mutiny Acts.

(*h*) App., p. lxxiv.

(*i*) See 5 & 6 Will. 4, c. 76, s. 21, App., p. xii.

(*k*) See 13 & 14 Will. 3, c. 4; 3 & 4 Will. 4, cc. 49, 82; 1 & 2 Vict. c. 77.

(*l*) *R. v. Bower*, 1 B. & C. 585.

office, it seems clear that if a party elected under that Act and refusing to accept the office and he pay the fine fixed by the council, he cannot be compelled to serve.

At common law, also, a party unlawfully refusing to accept a corporate office was liable to be indicted (*a*), or to be proceeded against by criminal information (*b*); but the granting of a criminal information is entirely in the discretion of the Court; and it has been refused where the corporation had power by a bye-law to inflict a fine (*c*).

It may be noticed here that a councillor cannot be appointed a coroner (*d*) or recorder of the borough (*e*), or clerk to the justices, in the latter case under a penalty of £100 (*f*).

Under the Municipal Corporation Act councillors were also exempt and disqualified from serving on *any* jury for the borough (*g*). By a later Act (*h*) this exemption as to serving on grand juries was repealed as to boroughs not containing 12,000 inhabitants according to the last census, and now the exemption is extended to serving on county juries (*i*).

No councillor or other officer of the corporation is allowed to be interested in any contract for building or repairing the borough gaol; and if he is so interested, he loses his office and becomes disqualified from holding any corporate office (*k*).

(*a*) See *Vanacher's Case*, 1 Ld. Raym. 499; 5 Mod. 440.

(*b*) See *R. v. Whitwell*, 5 T. R. 86; *R. v. Brown*, cit. in *R. v. Leyland*, 3 M. & S. 186.

(*c*) See *R. v. Hungerford*, 11 Mod. 142; *R. v. Grosvenor*, 2 Stra. 1193.

(*d*) 5 & 6 Will. 4, c. 76, s. 62, App., p. xvi.

(*e*) *Id.*, sec. 103, App., p. xlv.

(*f*) 24 & 25 Vict. c. 75, s. 5, App., p. clxix.

(*g*) Sec. 122.

(*h*) 16 & 17 Vict. c. 79, s. 6, App., p. cxxxviii.

(*i*) 33 & 34 Vict. c. 77 (The Juries Act, 1870), Sched. "Persons exempt from serving on juries: \* \* \* \* \* members of the council of the municipal corporation of any borough, and every justice of the peace, assigned to keep the peace therein, and the town clerk and treasurer for the time being of every such borough, so far as relates to any jury summoned to serve in the county where such borough is situate."

In a modern work of authority it is stated that by this provision "councillors are only exempt from serving on county juries and not on juries for the borough." But it is submitted that independently of the fact that the provisions of the former Acts are not repealed, it never can have been intended that a borough justice, who is placed in the same category as members of the council, would be liable to serve on a borough jury.

(*k*) 7 Will. 4 and 1 Vict. c. 78, s. 39, App., p. lxxxviii.

## CHAPTER XI.

### *Of the Election and Duties of Aldermen.*

The number of aldermen in a borough is to be one third of the number of councillors (*l*).

The election of aldermen is to take place on the 9th of November in every third year (*l*), or, if that day be a Sunday, then on the following day (*m*).

If the election has not taken place on the appointed day, it may take place on the day following; or, if that day be a Sunday, then on the following Monday, as in the case of the election of councillors (*n*).

The election of mayor is required, as will presently be seen, to precede that of aldermen (*o*), and a prior election of aldermen on the same day is void (*p*).

One half of the number of aldermen are to go out of office on the day mentioned, being those who have been aldermen for the longest time without re-election (*q*).

Any alderman going out of office may, if qualified, be forthwith re-elected (*l*).

The council, or the majority of the members present (*r*), are to elect the aldermen from the councillors, or from persons qualified to be councillors; but any alderman going out of office is not entitled to vote at the election (*l*), but he may vote in the election of mayor (*s*).

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(*l*) 5 & 6 Will. 4, c. 76, s. 25, App., p. xiii.

(*m*) *Id.*, sec. 30, App., p. xv.

(*n*) 7 Will. 4 and 1 Vict. c. 78, s. 25, App., p. lxxxv; *vide supra*, p. 88.

(*o*) 5 & 6 Will. 4, c. 76, s. 49, *infra*.

(*p*) *R. v. M'Gowan*, 11 A. & E. 869.

(*q*) 5 & 6 Will. 4, c. 76, s. 25, *ut supra*. See *R. v. Alderson*, 1 Q. B. 878; and 6 & 7 Vict. c. 89, s. 3, App., p. cx.

(*r*) 5 & 6 Will. 4, c. 76, s. 69, App., p. xxix.

(*s*) *R. v. Maddy*, 11 A. & E. 869, 886.

No person can be elected an alderman who is disqualified as councillor; and a person to be eligible as an alderman must be possessed of the same qualification as a councillor (a).

The method of electing aldermen, which is not affected by the Ballot Act, 1872 (b), is as follows:—

Every councillor, entitled to vote, may vote for any number of persons not exceeding the number of aldermen to be chosen, by delivering to the mayor or chairman of the meeting a signed voting paper, containing the christian and surnames of the persons for whom he votes, with their places of abode and descriptions; and the chairman is openly to read the same, and to deliver them to the town clerk to be kept among the records (c).

If a candidate is described in the voting paper as of his place of business, instead of his place of abode, this is such a misdescription as will avoid his election (d).

By the Stamp Act, 1878 (e), a penny stamp is imposed on every "voting paper" described as "any instrument for the purpose of voting by any person entitled to vote at any meeting;" it was held that these words were intended to apply to meetings where voting by proxy was allowed, and not to voting papers at a meeting for the election of aldermen (f).

In the case of an equality of votes, the mayor or chairman is to have a casting vote, whether or not he may be entitled to vote in the first instance (g).

Although, as has just been stated, an alderman going out of office cannot vote at the election (g), yet if he has been elected mayor, and in that capacity presides at an election of aldermen, he is entitled to give a casting vote, though he cannot give an original one (h).

An alderman is required, before he acts, to make and sub-

(a) 5 & 6 Will. 4, c. 76, s. 28, App., p. xiv. See the last Chapter.

(b) See 35 & 36 Vict. c. 33, s. 29, App., p. ccxv.

(c) 7 Will. 4 and 1 Vict. c. 78, s. 14, App., p. lxxxiii.

(d) *R. v. Deighton*, 5 Q. B. 896; see also *R. v. Coward*, Q. B., 14 J. P. 68.

(e) 33 & 34 Vict. c. 97, s. 3.

(f) *R. v. Strachan*, L. R. 7 Q. B. 463.

(g) *Supra*, p. 115.

(h) *B. v. Stanley*, 11 A. & E. 869, 882, 886.

scribe a similar declaration to that made by a councillor (*i*); and he is liable to the same penalty of £50 for acting without making the declaration, or without being qualified, or after he shall cease to be qualified (*k*).

All acts, however, of a person in possession of the office are valid, notwithstanding his disqualification (*k*).

If a councillor is elected alderman, and does not accept the office, by making the requisite declaration, within five days after notice of his election (*l*), he is liable to a fine not exceeding £50, to be fixed by a bye-law to be made in council (*m*).

An alderman, if required to do so in writing by any two members of the council, must once in every three years make and subscribe a declaration that he is qualified to the same amount as that mentioned in his original declaration (*n*).

There are similar exemptions from the service of the office, or on the payment of the fine, as in the case of a person elected to be councillor (*o*).

If an alderman is declared bankrupt or insolvent, or compounds with his creditors, or if he absents himself from the borough for more than six months together, unless in case of illness, he loses his office; and in the case of absence, is also liable to the same fine as if he had refused to accept the office, but he may be re-elected (*p*).

If an extraordinary vacancy takes place in the office of alderman, it is to be filled up in the same way by the council, within ten days after it shall occur; and if a councillor is elected to fill the vacant office of alderman, the vacant office of councillor is to be filled up in the manner before mentioned (*q*); and the person elected to the vacant office of alderman is to hold the office until the person in whose room he has been chosen would regularly have gone out of office (*r*).

(*i*) 5 & 6 Will. 4, c. 76, s. 50, *supra*, p. 111.

(*k*) *Id.*, sec. 53, *supra*, p. 112.

(*l*) See *R. v. Preece*, 5 Q. B. 94, *supra*, p. 112, as to what amounts to notice.

(*m*) 5 & 6 Will. 4, c. 76, s. 51, *supra*, p. 102, and sec. 90 (*l*b).

(*n*) *Id.*, sec. 50.

(*o*) *Supra*, p. 112.

(*p*) 5 & 6 Will. 4, c. 76, s. 52, App., p. xxii.

(*q*) Under sec. 47 of the 5 & 6 Will. 4, c. 76, *supra*, p. 96.

(*r*) 5 & 6 Will. 4, c. 76, s. 27, App., p. xiv.

There does not appear to be any provision for calling a meeting in such a case.

An alderman during his office, continues a member of the council (a).

As has been already seen, in the event of the death of the mayor, or his incapability of acting, an alderman is to be chosen to preside at elections (b); and an alderman is also to be chosen to preside at the ward elections, where the borough is divided into wards (c); and if an alderman so elected neglects to comply with the provisions of the Act in such respects, he is liable to a penalty of £100, to be recovered by action in one of the superior courts, which action must be brought within three calendar months after the offence; one half of the penalty to be paid to the person suing, and the other to the treasurer of the borough (d).

In case of the illness of an alderman, or his incapacity to act at an election the mayor may appoint another alderman to act in the room of such alderman during his illness or incapacity (e). And under similar circumstances occurring in a borough where the number of aldermen does not exceed the number of wards, the mayor is to appoint a councillor of a different ward, to preside at the election (f).

In these two cases last mentioned there does not appear to be any penalty for refusing to act.

An alderman is disqualified from holding the same offices that a councillor is disqualified from holding (g).

(a) 5 & 6 Will. 4, c. 76, s. 26, App., p. xiv.

(b) *Id.*, sec. 36, *supra*, p. 93. As to parliamentary elections, see sec. 57, *post.*

(c) *Id.*, sec. 43, *supra*, p. 93.

(d) *Id.*, sec. 48, App., p. xx.

(e) 7 Will. 4 and 1 Vict. c. 78, s. 16, App., p. lxxxiv.

(f) 16 & 17 Vict. c. 79, s. 10, App., cxxxviii.

(g) *Vide supra*, p. 114.



## CHAPTER XII.

### *Of the Election and Duties of the Mayor.*

The election of the mayor, which is not affected by the Ballot Act, 1872 (*h*), is to take place at noon at the quarterly meeting of the council, on the 9th of November in every year (*i*) ; or if that day be a Sunday, then on the following day (*k*).

If the election has not taken place on the appointed day, it may take place on the day following, or if that day be a Sunday, then on the Monday (*l*).

The election of the mayor is to be the first thing done at the meeting (*m*).

The council, or a majority of the members present (*n*) are to elect the mayor out of the aldermen or councillors of the borough (*n*).

There is no provision as to who is to have the casting vote in the case of an equality of votes.

The mayor is required, before he acts, to make and subscribe a similar declaration to that made by an alderman or councillor (*o*), and he is liable to the same penalty of £50 for acting without making the declaration, or without being qualified, or after he shall cease to be qualified (*p*).

All acts, however, of a person in possession of the office are valid, notwithstanding his disqualification (*q*).

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(*h*) 35 & 36 Vict. c. 33 ; see sec. 29, App., p. ccxxv.

(*i*) 5 & 6 Will. 4, c. 76, s. 49, App., p. xxi.

(*k*) *Id.*, sec. 30, App., p. xv.

(*l*) 7 Will. 4 and 1 Vict. c. 78, s. 25, App., p. lxxxv.

(*m*) 5 & 6 Will. 4, c. 76, s. 69, App., p. xxix ; and see *R. v. M'Gowan*, *supra*, p. 113.

(*n*) 5 & 6 Will. 4, 76, s. 69.

(*o*) *Id.*, sec. 50, App., p. xxi, *supra*, p. 111.

(*p*) *Id.*, sec. 53, *vide supra*, p. 107.

(*q*) See last note, and also 6 & 7 Will. 4, c. 104, s. 7, App., p. lxxiii.

If a *councillor* is elected mayor, and does not accept the office, by making the requisite declaration within five days after notice of his election (*a*), he is liable to a fine, not exceeding £100, to be fixed by a bye-law to be made in council (*b*).

There are similar exemptions from the service of the office, or the payment of the fine, as in the case of a person elected to the office of councillor (*c*).

The Act does not authorize the imposition of any fine upon an *alderman* who has been elected mayor and who declines to accept the office; but it seems that a *mandamus* would lie in such a case to compel him to serve the office (*d*); or he may be proceeded against by indictment (*e*), or in some cases by criminal information (*f*).

The mayor is to continue in office for one whole year (*g*), and until his successor shall have accepted the office and have subscribed the requisite declaration (*h*); and he may be re-elected at the expiration of his office (*i*).

If the mayor is declared bankrupt or insolvent, or compounds with his creditors, or if he absents himself from the borough for more than two calendar months together, unless in case of illness, he loses his office; and in the case of absence, is also liable to the same fine as if he had refused to accept the office; but he may be re-elected on the cessation of his disqualification, as in the case of a councillor (*k*).

In the case of a vacancy occurring in the office of mayor, by reason of the person elected declining to accept the office, or by his death or his ceasing to hold the office, the council, within

(*a*) *Vide R. v. Preece*, 5 Q. B. 94, *supra*, p. 112, as to what amounts to notice.

(*b*) 5 & 6 Will. 4, c. 76, ss. 51, 90, App., p. xxi.

(*c*) *Supra*, p. 112.

(*d*) *R. v. Bower*, 1 B. & C. 585; *R. v. Leyland*, 3 M. & S. 186.

(*e*) *Vanacher's Case*, *Ld. Raym.* 499; *Carth.* 400.

(*f*) *R. v. Whitwell*, 5 T. R. 86. But see *R. v. Hungerford*, 11 Mod. 142; *R. v. Grosvenor*, 2 Stra. 1193.

(*g*) 5 & 6 Will. 4, c. 76, s. 49, App., p. xxi.

(*h*) 6 & 7 Will. 4, c. 105, s. 4, App., p. lxxv.

(*i*) Sec 3 & 4 Vict. c. 47, App., Part II, p. cclxxiii, repealing the 9 Anne, c. 20, which prevented the re-election of mayors and other officers in certain boroughs.

(*k*) 5 & 6 Will. 4, c. 76, s. 52, App., p. xxii.

ten days after such vacancy, shall elect another fit person to be mayor for the remainder of the current year (*l*).

If a vacancy occurs by reason of the death, resignation, or lawful removal of the mayor, notice to convene the meeting of the council to supply such vacancy is to be signed by the town clerk (*m*).

There is no provision made for calling a meeting of the council where the person elected as mayor declines to accept the office.

The mayor, during his office, continues a member of the council (*n*); and he is *ex officio* a justice of the peace in the borough, and continues so, unless disqualified, during the next succeeding year after he ceases to be mayor (*o*). As such justice he must take the judicial oath prescribed by 31 & 32 Vict. c. 72 (*p*). He is also the returning officer at parliamentary elections (*o*). If at the time of such election the mayor is dead, absent, or incapable of acting, the council are to elect one of the aldermen to act as returning officer (*o*).

The meeting of the council in such cases is to be called in the same way as in that of a meeting to elect a new mayor in the event of a vacancy (*q*).

The mayor, during his year of office, is the chief officer of the borough (*r*), and is to have precedence in all places within the borough (*o*) and over all justices for the borough; and he shall be entitled to take the chair at all meetings of justices within the borough (*s*). But he is not to have precedence over justices for the county or division of the county in which the borough is situate, unless when acting in relation to the borough business; nor over any stipendiary magistrate engaged in administering justice (*t*).

It will be noticed that it is only when the stipendiary magistrate "is engaged in administering justice that" the mayor

(*l*) 5 & 6 Will. 4, c. 76, s. 49, App., p. xxi.

(*m*) 16 & 17 Vict. c. 79, s. 9, App., p. cxxxviii.

(*n*) 5 & 6 Will. 4, c. 76, s. 26, App., p. xiv.

(*o*) *Id.* sec. 57, *Ib.*

(*p*) Sec. 4, App., p. cciii, and Sched., Part II.

(*q*) *Vide supra.*

(*r*) 5 & 6 Will. 4, c. 76, s. 6, App., p. vii.

(*s*) It had been held in *Exp. Birmingham (Mayor)*, 3 E. & E. 222; 30 L. J. Q. B. 2, that the "precedence" mentioned in 5 & 6 Will. 4, c. 76, s. 57, *supra*, referred only to social and not to magisterial precedence, and did not therefore give the mayor precedence at meetings of justices within the borough.

(*t*) 24 & 25 Vict. c. 75, s. 2, App., p. clxviii. The same section provides

does not take precedence of him ; at other times he would be entitled to do so.

The council are to fix such salary to be paid to the mayor as they shall think reasonable (a) ; the amount of the salary, therefore, is in the discretion of the council, or even it would seem the allowance of any salary at all ; although as the statute says they " shall order such salary " as they shall think reasonable, it is possible the Court of Queen's Bench (b) might hold they were bound to order *some* salary.

The duties of the mayor which have already been enumerated in former portions of this work may be briefly repeated here as follows :

To examine into the claim of any person to be admitted a burgess or freeman (c).

With the assistance of the assessors, to revise the burgess lists between the 1st and 15th of October in each year ; to insert the names of claimants who have proved their qualification, and to expunge those of persons who have been objected to upon sufficient grounds ; to correct mistakes and supply omissions in the lists (d) ; and to sign them in open court (e). He also has the power of adjourning the court of revision, and of administering an oath or affirmation, when requisite, at the same (f).

To deliver the lists when revised and signed, to the town clerk (g).

To attend at the town hall and decide on the validity of every objection made to a nomination paper for the election of councillor (h).

To appoint officers for taking the poll at such election (i).

To provide polling booths, or to hire rooms as booths, for the election (k).

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that the mayors of Cambridge and Oxford are not to have precedence over the respective vice-chancellors. It seems doubtful whether the mayor is a justice of the *quorum* : *R. v. Llangian (Inhabitants of)*, 4 B. & S. 249.

(a) 5 & 6 Will. 4, c. 76, s. 58, App., p. xiv.

(b) See note at the beginning of the volume.

(c) *Id.* sec. 5, *supra*, p. 49.

(d) *Id.* sec. 18, *supra*, p. 81.

(e) *Id.* sec. 19, *supra*, p. 82.

(f) *Id.* secs. 19, 21, *supra*, p. 82.

(g) *Id.* sec. 22, *supra*, p. 84.

(h) 38 & 39 Vict. c. 40, s. 1 (3), App., p. ccxciii. See Chap. X., *ante*.

(i) *Id.* sec. 3, App., p. ccxciv.

(k) *Id.* sec. 33, *supra*, p. 91.

To furnish every polling station with compartments, and the presiding officer with ballot papers (*l*).

To preside at such election on the 1st of November in every year, in boroughs which are not divided into wards (*m*):

To conduct the election according to the provisions of the Ballot Act (*n*):

In the case of an equality of votes to name the person who shall be elected (*o*).

To forward to the clerk of the peace all the packets of ballot papers in his possession together with all other documents and papers relating to the balloting (*p*), endorsing on each packet a description of its contents and the date of the election to which they relate (*q*).

The mayor is also to preside over the election of auditors and assessors (*r*) (of which hereafter); and he is on the 1st of March in every year, to name a member of the council (or in the case of an extraordinary vacancy, then within ten days of such vacancy), to act as co-auditor with the auditors who have been elected (*s*).

If he neglects or refuses to revise the burgess list, or to conduct the election of councillors, assessors, or auditors, he will be liable to a penalty of £100 (*t*), to be recovered within

(*l*) 38 & 39 Vict. c. 40, s. 4, App., p. ccxciv. See Chap. X., *ante*.

(*m*) 5 & 6 Will. 4, c. 76, ss. 30, 32, *supra*, p. 93. This Act required the assistance of the assessor at the election, but it is now to be held before the mayor alone: 35 & 36 Vict. c. 33 (the Ballot Act), s. 21, App., p. ccxv.

(*n*) 35 & 36 Vict. c. 33, App., p. ccxi. Most of his duties under that Act have already been pointed out in the last Chapter. As to counting the votes, see 35 & 36 Vict. c. 33, sched., rules 31—37, App., p. ccxxi. See also 38 & 39 Vict. c. 40, s. 4, App., p. ccxciv.

(*o*) 5 & 6 Will. 4, c. 76, s. 35, *supra*, p. 110.

(*p*) See these enumerated, 35 & 36 Vict. c. 33, sched., rule 38, App., p. ccxxii.

(*q*) *Id.*, and rule 64 (*b*), substituting, in municipal elections, the town clerk for the clerk of the Crown in Chancery. As to declaring the result of the election, *vide supra*, p. 110.

(*r*) 5 & 6 Will. 4, c. 76, s. 37, App., p. xvii.

(*s*) *Id.* sec. 93, App., p. xli.

(*t*) The 48th sect. of the Municipal Corporation Act attached the same penalty for neglecting or refusing to *declare* such election, which by sect. 35, the mayor was to do by publishing a list of the names of the persons elected not later than two p. m., of the day next but one after the election. This part of the last mentioned section is, however, repealed by the Ballot Act (35 & 36 Vict. c. 33, sched. 4.), *vide supra*, p. 110.

three months after the commission of the offence, by action in one of the superior courts (*a*).

It does not appear to be necessary that the mayor should be present at the meeting of the council held for the election of aldermen; but if he is present, he is to act as chairman, and in case of an equality of votes, is to have the casting vote (*b*).

He has power to call an extraordinary meeting of the council at any time he may think proper, by causing a notice, signed by himself, to be fixed on the town hall, three clear days before the intended meeting, stating the time and place thereof (*c*).

It does not seem that the business to be transacted is required to be stated in the *notice*; but a *summons* to attend the council, signed by the town clerk, must be left at the place of abode of every member of the council three clear days before the meeting, and this summons must specify the business proposed to be transacted at the meeting (*d*).

If upon receiving a requisition, signed by five members of the council, the mayor refuses to call a meeting, the same five members may do so, upon giving a notice signed by themselves, instead of by the mayor; and in that case the *notice* must state the business proposed to be transacted. Summonses must also be given as in the case of the meeting called by the mayor (*e*).

The mayor has authority to issue his warrant for levying the borough rate or watch rate (*f*); and also to certify, when necessary, as to the expediency of dividing the court of quarter sessions (*f*); but these matters will more properly be considered in another portion of the work.

It may be mentioned again here that an election over which the mayor presides is not to be questioned for any defect in his title, if he was then in actual possession of the office (*g*).

(*a*) 5 & 6 Will. 4, c. 76, s. 48, App., p. xx.

(*b*) 7 Will. 4, and 1 Vict. c. 78, s. 14, App., p. lxxxiii.

(*c*) 5 & 6 Will. 4, c. 76, s. 69, App., p. xxix.

(*d*) See *R. v. Thomas*, 8 A. & E. 183.

(*e*) 6 & 7 Will. 4, c. 104, s. 5, App., p. lxxiii.

(*f*) 7 Will. 4, and 1 Vict. c. 19, s. 1, App., p. lxxix.

(*g*) *Id.*, c. 78, s. 1, *supra*, p. 108.

If the mayor is interested in any contract for building or repairing the borough gaol, he becomes disqualified, in the same manner as a councillor (*h*).

The mayor may appoint from time to time an alderman or councillor to act as deputy mayor, during his own illness or absence, which appointment is to be signified in writing to the council, and is to be recorded in the minutes of their proceedings (*i*).

Such deputy is empowered to do all acts which the mayor in his official capacity might do himself; but unless the deputy is a justice he cannot act as one; nor can he preside at any meeting of the council unless specially appointed by the meeting to do so (*k*).

From time to time all civil disabilities or disqualifications which attached to Roman Catholics and Dissenters have been removed by the legislature.

Among other things it had been enacted in the beginning of the reign of George the First that if any mayor, &c., resorted to a place of religious worship other than of the Church of England, as by law established, "in the gown or other peculiar habit, or attended with the ensign or ensigns of or belonging to such his office" if convicted thereof, he should be disabled from holding such office, and be adjudged incapable to bear any public office or employment whatsoever (*l*).

By the Catholic Emancipation Act (*m*), in addition to the forfeiture of office, the offence was punishable by a penalty of £100.

So important did the legislature of those days consider it that a corporate officer, unless he belonged to the Established Church, should not worship God in his official character.

These enactments remained untouched by the Municipal Corporation Act.

(*h*) 7 Will. 4, and 1 Vict. 39, *supra*, p. 114.

(*i*) 16 & 17 Vict. c. 79, s. 7, App., p. cxxxviii.

(*k*) *Id.* sec. 8 (*Ib.*)

(*l*) 5 Geo. 1, c. 4, s. 2.

(*m*) 10 Geo. 4, c. 7, s. 25.

But at length in the present reign it has been enacted that "every person holding any judicial, or civil, or *corporate* office" may attend any place of worship in his robe of office or with his official insignia "without incurring any forfeiture of office, or penalty" (a).

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(a) 30 & 31 Vict. c. 75, s. 4, App., p. cxvii. The former enactments, though virtually repealed by this Act, remained nevertheless on the statute book till the former was repealed by the Statute Law Revision Act, 1871 (34 & 35 Vict. c. 116), and the latter by the Promissory Oaths Act, 1871 (34 & 35 Vict. c. 48).

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## CHAPTER XIII.

### *Of the Powers of the Council.*

The council, as has been already stated (*b*), consists of the mayor, aldermen and councillors.

Several of the powers and duties of the council have already been pointed out incidentally in the course of this work.

Thus it has been seen that they are to have all the authority and power of the old corporation (*c*); they are to elect the aldermen (*d*) and the mayor (*e*); to order the payment of the overseers' expenses in making out the burgess lists (*f*); and to make bye-laws for the good rule and government of the borough, for the prevention and suppression of nuisances, and for the appointment of fines for such offences (*g*).

The production of a written or printed copy of any bye-laws made by the council, authenticated by the common seal of the borough will be evidence, until the contrary is proved, of the due making of such bye-laws, and, if so stated in the copy, of their having been approved and confirmed by the requisite authority, in all legal proceedings, without further proof of the making, or approval, or confirmation of such bye-laws, or of the common seal (*h*).

They have the power by order to divide the borough or any ward or wards therein into polling districts (*i*).

The council have also the power to appoint the town clerk, treasurer, and other similar officers (*k*) usually appointed in the particular borough. They may also appoint some other person than the treasurer to receive money due from corporate

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(*b*) *Supra*, p. 88.

(*c*) *Supra*, pp. 7, 9.

(*d*) *Supra*, p. 115.

(*e*) *Supra*, p. 119.

(*f*) *Supra*, p. 74.

(*g*) *Supra*, p. 15.

(*h*) 36 & 37 Vict. c. 33, s. 2, App., p. ccxlviii.

(*i*) 38 & 39 Vict. c. 40, s. 10, App., p. ccxcv.

(*k*) 5 & 6 Will. 4, c. 76, s. 58, App., p. xxv.

officers (a); to make orders for the payment of money by the treasurer (b), and for the officers to account from time to time (c).

They may also appoint, out of their own body, from time to time, either general or special committees, for any purposes which they may consider would be better regulated and managed by such means (d), and they are expressly directed to appoint a watch committee, of which the mayor is to be a member (e).

The council being substituted for the old corporate body, where the latter had certain powers under a local Act, as to the appointment and removal of a collector of certain quay and harbour duties, it was held that the council had the same powers under that Act as the old corporation, but no greater (f).

The council are to act as trustees (except in cases of charitable trusts), where the former corporation were *ex officio* the sole trustees (g).

Where a local Act had created a court of requests in a borough, and the corporation, together with other persons mentioned in the Act, were made the commissioners, but the corporation alone had the power of appointing the clerk of the court; it was held that they were solely trustees or commissioners for this purpose, and therefore that the power of appointing the clerk had devolved upon the council (h).

In cases where the old corporate body, or any number of the members thereof, were formerly joint trustees with others, except in cases of charitable trusts, the council are empowered to appoint a limited number from their own body to act jointly with the other trustees (i).

(a) 5 & 6 Will. 4, c. 76, s. 58, App., p. xxv.

(b) *Id.* sec. 59 (*Ib.*)

(c) *Id.* sec. 60 (*Ib.*)

(d) *Id.* sec. 70, App., p. xxx.

(e) *Id.* sec. 76, App., p. xxxii.

(f) *R. v. Poole (Corp.)*, 7 A. & E. 730, 738; 3 N. & P. 110, 125.

(g) 5 & 6 Will. 4, c. 76, s. 72, App., p. xxxi. By sec. 142, App., p. lviii, the term "trustees" includes "trustees, commissioners, or directors, or the persons charged with the execution of a trust or public duty, by whatever name they are designated."

(h) *Staniland v. Hopkins*, 9 M. & W., 178. See *R. v. Hopkins*, 1 Q. B. 161.

(i) 5 & 6 Will. 4, c. 76, s. 73, App., p. xxxi.

In cases of charitable trusts, that is, in all cases where property had been granted to a corporation or any members thereof, subject to a payment for charitable purposes, imposed by the grantor (*k*), the estate, interest, and powers, were to remain in the persons in whom, at the time of the passing of the Municipal Corporation Act, the same were vested, till the 1st of August, 1836, when the Lord Chancellor was to make orders for the administration of such trust estates (*l*).

Tolls granted by charter to a corporation for the repair of the roads and bridges within the borough are gifts for charitable purposes (*m*) ; but property appropriated by a corporation to the maintenance of lecturers to preach before the corporation is not a charitable trust (*n*).

The stat. 39 Eliz. c. 5, enables "all and every person and persons" to found hospitals for the poor, and to incorporate them. A municipal corporation comes within these words and may exercise the powers given by that statute (*o*).

Where under any local Act powers were formerly exercised by justices in quarter sessions, not relating to the business of a court of criminal or civil judicature, such powers are now vested in the council (*p*).

A court of requests having been established by a local Act, which gave the justices at quarter sessions power to reduce the fees to be paid to the officers of such court, it was held that the regulation of such fees was a matter relating to the business of a court of civil judicature, and therefore, that the town council had no authority to reduce the fees (*q*).

In most boroughs there were trustees appointed by local Acts, for paving, lighting, supplying with water or gas, or cleansing, watching, or otherwise regulating or improving the borough, or for providing or maintaining a cemetery or market

(*k*) See *R. v. Sankey*, 5 A. & E. 423.

(*l*) 5 & 6 Will. 4, c. 76, s. 71, App., p. xxx.

(*m*) *Attorney-General v. Shrewsbury (Corp.)*, 6 Beav. 220.

(*n*) *In re Oxford Charities*, 3 Mylne & C. 239.

(*o*) *In re Newcastle (Corp.)*, 12 Cl. & F. 402.

(*p*) 6 & 7 Will. 4, c. 105, s. 8, App., p. lxxvi. See *Staniland v. Hopkins*, *supra*, p. 126.

(*q*) *Palmer v. Powell*, 6 M. & W. 627.

therein. Such trustees may, if they deem it expedient, transfer their powers to the council (a).

The transfer is to be made at a meeting to be called for that purpose; and it is to be in writing under the corporate seal, if the trustees are a corporation, or by deed, if not (a).

On the execution of such transfer the municipal corporation becomes trustee for executing by the council all the powers and provisions of the local Act; and all rights, &c., vested in the old trustees are to vest in the corporation; and all liabilities and obligations of the trustees are transferred to the corporation (a).

With regard to lighting the borough, the council have power to order any parts thereof, which are not within any local Act for regulating the lighting of the borough, to be included in such Act; but the rate for lighting such parts is not to exceed the average expense in the pound of lighting the other parts of the borough (b).

They may also assume the powers of inspectors, under the Parochial Lighting Act (c), for lighting any part of the borough not within a local Act (d).

A local board of health duly constituted under the Public Health Act, 1848 (e), with powers to make a rate for the purposes of that Act, are not trustees for any of the purposes mentioned in the 20 & 21 Vict. c. 50, s. 2 (f); and a transfer by such board to a corporation is invalid; and hence a rate made by a corporation under such transfer is illegal (g).

The council have the general control over the borough fund, and are empowered to make various payments out of the same. These matters will be more properly considered subsequently in the chapter that treats of that fund (h).

The council are required to hold quarterly meetings, for the transaction of general business, no notice being required of the

(a) 20 & 21 Vict. c. 50, s. 2, App., p. cxlviii. The former provisions contained in 5 & 6 Will. 4, c. 76, s. 75, are repealed by sec. 2 of this later Act.

(b) 5 & 6 Will. 4, c. 76, s. 87, App., p. xxxvi.

(c) 3 & 4 Will. 4, c. 90, App., Part II., p. cclxxii.

(d) 5 & 6 Will. 4, c. 76, s. 88, App., p. xxxvii.

(e) 11 & 12 Vict. c. 63.

(f) See note (a), *supra*.

(g) *Swinford v. Keble*, L. R., 1 Q. B. 549.

(h) *Infra*, Chap. XXVII.

business to be transacted on those days. Such quarterly meetings may be adjourned (*i*).

Extraordinary meetings called by the mayor have been mentioned before (*k*).

At an *adjourned quarterly* meeting, it is necessary that any business proposed to be transacted, which was not actually entered upon at the general quarterly meeting, should be specified (*l*).

To constitute a valid meeting there must be present not less than one-third part of the number of the whole council (*i*).

The mayor, if present, is to preside; in his absence the councillors are to choose a chairman from the aldermen present, or if there is no alderman present, then from the other councillors (*i*).

All questions brought before the meeting, including that of adjournment, and all acts to be done by the council, are to be decided by the majority of the members present (*i*).

The chairman of the meeting has a single vote, as a member; but in case of an equality of votes, he has a second or casting vote (*i*).

Minutes of the proceedings are to be drawn up and signed by the chairman of the meeting (*i*), either at the same meeting or at the next ensuing meeting (*m*), and if they have been duly signed they are receivable in evidence in all legal proceedings without further proof; and until the contrary is proved every meeting of which minutes have been made shall be deemed to have been duly convened and held (*n*).

These minutes are to be open to the inspection of any burgess, at all seasonable times, upon the payment of one shilling (*i*), and he is also at liberty to copy or make extracts

(*i*) 5 & 6 Will. 4, c. 76, s. 69, App., p. xxix.

(*k*) *Supra*, p. 124.

(*l*) *R. v. Grimshaw*, 10 Q. B. 774.

(*m*) 36 & 37 Vict. c. 33, s. 3, App., p. ccxlviii. Before this Act it had been intimated that it might be sufficient if the minutes were drawn up at the meeting and signed afterwards. See *R. v. Evesham (Mayor)*, 8 A. & E. 266; 3 N. & P. 351. See also *Miles v. Bough*, 3 Q. B. 845; *Southampton Dock Company v. Richards*, 1 M. & G. 448.

(*n*) 36 & 37 Vict. c. 33, s. 2, App., p. ccxlviii.

from them and from any order in council for the payment of money (a).

In cities and towns that are counties of themselves, the council are required to appoint a sheriff (b), which appointment is to take place on the 9th of November in each year, immediately after the election of the mayor, and the sheriff so appointed is to hold office until the appointment of his successor (c).

It will be seen hereafter (d) that upon the petition of the council, the Crown may grant a court of quarter sessions to a borough; and in such a case the council are to appoint a coroner within ten days after such grant; he is not to be an alderman or councillor. The office is to be held during good behaviour; and in case of a vacancy is to be filled up within ten days afterwards (e).

No qualification for the appointment is required by the Act.

Where the council of a borough having petitioned the Crown for the grant of a court of quarter sessions, and having received a communication from the Secretary of State, stating that the Crown had made the grant, appointed a coroner within ten days of the receipt of the communication, but before the grant had actually passed the Great Seal; and the coroner assumed and exercised the office, and was repeatedly recognised in that capacity by the council, both before and within ten days after the actual grant had been received by them; it was held that even though the original appointment might have been informal, as having been made too soon, yet it was made valid by the subsequent recognition (f).

The council have also certain powers in connexion with the

(a) 7 Will. 4, and 1 Vict. c. 78, s. 22, App., p. lxxxiv.

(b) 5 & 6 Will. 4, c. 76, s. 61, App., p. xxvi. By the 5 & 6 Vict. c. 104, s. 8, App., p. cviii., the office of sheriff is declared not to be a place of profit within the 28th section of the Municipal Corporation Act. As to the city of Oxford, which had no sheriff before the passing of the Municipal Corporation Act, see *Grainger v. Taunton*, 3 Bing. N. C. 64.

(c) 6 & 7 Will. 4, c. 105, s. 5, App., p. lxxv.

(d) *Vide post*, Chap. XXIII.

(e) 5 & 6 Will. 4, c. 76, s. 62, App., p. xxvi.

(f) *R. v. Grimshaw*, 10 Q. B. 747.

watch-committee as to the payment of extra expenses incurred by constables. These will be specified hereafter (*g*).

They have also power to levy a watch-rate not exceeding eightpence in the pound (*h*).

The application of the borough fund by the council will be treated of in a separate chapter (*g*).

In boroughs where the roads have been repaired by the inhabitants of the parishes where such roads are situated, the council are empowered on the petition of the majority of the ratepayers of such parishes to adopt such parish roads as the council consider advisable, and may apply the rates levied and collected by them for the repair of the public streets in the borough in repairing such parish roads (*i*).

In all boroughs which have a separate commission of the peace, the council have power to appoint inspectors of weights and measures (*k*).

In any borough in England which is not assessed to the county rate, "the mayor, aldermen, and burgesses acting by the council" constitute "the local authority" for the purpose of carrying out certain provisions of the Explosives Act, 1875 (*l*); and the council of any borough which is so assessed may by order of a Secretary of State, on the application of such council, be declared to be a local authority for the purposes of the Act (*m*).

Under this Act the council may hear applications for their assent to the site of any new factory or magazine for gunpowder (*n*), and also objections to it, they may either dissent from the application, or assent thereto either absolutely or conditionally (*o*). If they assent the applicant may obtain a license from the Secretary of State; if they dissent or impose conditions

(*g*) *Post*, Chap. XXVII.

(*h*) 5 & 6 Will. 4, c. 76, s. 92, App., p. xxxviii.; 22 & 23 Vict. c. 32, s. 5, App., p. clvi. See 8 & 9 Vict. c. 110, App., p. cxiii.

(*i*) 25 & 26 Vict. c. 61, s. 45, App., p. clxxi.

(*k*) 22 & 23 Vict. c. 56, s. 4, App., p. clxi., amended by 24 & 25 Vict. c. 75, s. 6, App., p. clxx.

(*l*) 28 Vict. c. 17, s. 67.

(*m*) *Id.* sec. 68.

(*n*) The provisions as to gunpowder in this Act apply to every other explosive: sec. 39.

(*o*) *Id.* sec. 7.

not submitted to by the applicant, he may appeal to the Secretary of State (*a*).

They may grant licenses for gunpowder-stores (*b*), and may register premises for keeping gunpowder (*c*).

They may grant licenses for small firework factories (*d*).

All expenses in carrying out the Act are to be paid out of the borough fund or borough rate (*e*).

Among other incidental duties and powers of the council it may be mentioned that ten days after a grant of sessions to a borough they are to send a copy to the clerk of the peace of the county in which the borough is situated (*f*). They are also to fix the fees for the clerk to the justices (*g*) and to make the schedule of the coroners' fees (*h*). They may also, if they think proper, recommend to the Secretary of State that the clerk of the peace should be paid by salary instead of by fees (*i*). They are to transmit the corporate accounts to the Secretary of State before the 1st of March in each year (*k*).

They are "the Prison Authority" under "the Prison Act, 1865" (*l*); they have the power of appointing inspectors under "The Cattle Diseases Prevention Act" (*m*), and they are constituted the "urban authority" under the Public Health Act, 1875 (*n*).

(*a*) 38 Vict. c. 17, s. 8.

(*b*) *Id.* sec. 15.

(*c*) *Id.* sec. 49, and see sec. 48.

(*d*) *Id.* sec. 21, and see sec. 28.

(*e*) *Id.* sec. 70. For further provisions the reader is referred to the Act itself, published by Messrs. Shaw.

(*f*) 5 & 6 Will. 4, c. 76, s. 112, App., p. xlviii.

(*g*) *Id.* sec. 124, App., p. lii.

(*h*) 7 Will. 4, and 1 Vict. c. 68.

(*i*) 14 & 15 Vict. c. 91, s. 9.

(*k*) 6 & 7 Will. 4, c. 104, s. 10, App., p. lxxiv.

(*l*) 28 & 29 Vict. c. 126; see sec. 5, App., p. clxxvii.

(*m*) 29 & 30 Vict. c. 2, ss. 4, 9.

(*n*) 38 & 39 Vict. c. 55, s. 6. The insertion of the provisions of this Act, though of considerable importance, would too much increase the bulk of this work. The reader is referred to the Act edited by Mr. Lumley, Q.C., and published by Messrs. Shaw.



## CHAPTER XIV.

### *Of the Election and Duties of Auditors and Assessors.*

On the 1st of March in each year the burgesses are to elect, by a majority of votes, two burgesses as auditors and two other burgesses as assessors (*o*) of the borough, who are to continue in office for one year (*p*).

They are to be elected from the persons qualified to be councillors (*q*).

But no burgess is eligible as auditor or assessor who is a member of the council, or town clerk, or treasurer (*r*).

The election is to be conducted in the same manner as that of councillors (*s*); that is, by nomination (*t*) and by ballot (*u*).

At the poll one ballot paper only is to be used by each voter, in which the names of the candidates for the respective offices are to be separate and distinguished so as to show the office for which they are respectively candidates. In counting the votes each ballot paper is to be deemed a separate ballot paper in respect of each office, and any objections thereto are to be considered and dealt with accordingly (*v*).

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(*o*) Sec. 43 of the Municipal Corporation Act enacted that in boroughs divided into wards, the burgesses should elect two assessors for each ward, but this enactment is repealed, and ward assessors are abolished by 35 & 36 Vict. c. 33, s. 21, App., p. ccxv.

(*p*) 5 & 6 Will. 4, c. 76, s. 37, App., p. xvii.

(*q*) *Id.* and see secs. 25, 28, App., pp. xiii., xiv.

(*r*) *Id.* s. 37, App., p. xvii.; see 7 Will. 4, and 1 Vict. c. 78, s. 15, App., p. lxxxiii. As to what will amount to notice of disqualification, *vide supra*, p. 108.

(*s*) 5 & 6 Will. 4, c. 76, s. 37, *ut supra*; and see *Id.* s. 32, App., p. xv. See Chap. X., *ante*.

(*t*) 32 & 33 Vict. c. 55, s. 6, App., p. cviii.; 35 & 36 Vict. c. 33, sched. 1, rules 5—8, App., p. ccvii., and sched. 2, *Ib.* p. ccxxv. 38 & 39 Vict. c. 40, App., p. ccxciii, and see Chap. XI., *ante*.

(*u*) 35 & 36 Vict. c. 33, s. 29, App., p. ccxv., 38 & 39 Vict. c. 40, App., *ut supra*.

(*v*) 38 & 39 Vict. c. 40, s. 6, App., p. ccxcv. See the form of the ballot paper, *Id.* sched. 1, No. 3, App. p. ccxcviii.

Any notice required by law to be given or published in connexion with the election of auditors and assessors may be comprised in one notice (*a*).

No burgess can vote for more than one person to be an auditor or assessor (*b*).

Every assessor is, as soon as convenient after his election, to appoint a deputy to act for him, in case of his illness or incapacity to act, and he is to signify such appointment in writing to the council (*c*).

There is no provision as to the re-election of either an auditor or an assessor (*d*).

In case of an extraordinary vacancy (*e*) arising in either office, the mayor is to fix a day, not later than fourteen (*f*) days after notice given to him or to the town clerk by any two burgesses (*g*), for proceeding to a new election, which is to be conducted in the same way as the original election (*h*).

Each officer is required, before he acts, to make a declaration of the acceptance of office similar to that required of a councillor (*i*).

If a person elected auditor or assessor does not accept the office, he is liable to a fine not exceeding £50, to be recovered as before-mentioned in the case of a councillor (*k*).

The exemptions from serving are the same as in the case of other borough officers (*k*).

If any person acts as auditor or assessor without making the

(*a*) 38 & 39 Vict. c. 40, s. 8, App., p. ccxcv.

(*b*) 5 & 6 Will. 4, c. 76, s. 37, App., p. xvii. This appears to be rather a singular provision: two auditors are to be chosen, but each elector can vote for only one candidate; if, therefore, all the electors were to vote for one person as auditor, it seems there could be only one elected. And the same remark applies to the election of assessors.

(*c*) 7 Will. 4 & 1 Vict. c. 78, s. 17, App., p. lxxxiv.

(*d*) See *R. v. Owens*, 2 E. & E. 86; 28 L. J. Q. B. 316; where the question was raised but not decided.

(*e*) See 35 & 36 Vict. c. 60, App., p. ccxxviii.

(*f*) 38 & 39 Vict. c. 40, s. 9, App., p. ccxcv., and see *ante*, p. 88, n. (*d*).

(*g*) 16 & 17 Vict. c. 79, s. 11, App., p. ccxxviii. See *R. v. Bester*, 3 L. T. (N. S.) 667.

(*h*) 5 & 6 Will. 4, c. 76, s. 47, App., p. xx.

(*i*) *Id.* sec. 50, App., p. xxi., *supra*, p. 111.

(*k*) *Id.* sec. 51, App., p. xxi., *supra*, p. 112.

requisite declaration, or without being duly qualified, he is liable to a penalty of £50 (*l*).

Besides the auditors elected by the burgesses who are termed *elective auditors* (*m*), the mayor, on the 1st of March in any year, or in case of any extraordinary vacancy, within ten days after such vacancy (*n*) is to name a member of the council to act as co-auditor with the elective auditors (*o*).

The duties of the auditors are to examine and audit the accounts of receipts and disbursements which are to be laid before them twice a year, in the months of March and September, by the treasurer of the borough; and if the accounts are correct the auditors are to sign the same (*p*).

The duties of the assessors are to assist the mayor, in revising the burgess lists (*q*).

If an assessor neglects or refuses to perform his duties in these respects he is to forfeit £100 (*r*).

All acts done by an auditor or an assessor acting as such will be valid, notwithstanding he may have been disqualified at the time (*s*); and no burgess roll is to be questioned for want of title in an assessor (*t*).

Neither an elective auditor nor an assessor can be a member of the council (*u*).

(*l*) 5 & 6 Will. 4, c. 76, s. 53, App., p. xxiii.

(*m*) See 7 Will. 4, & 1 Vict. c. 78, s. 15, App., p. lxxxiii.

(*n*) It is perhaps doubtful whether the provisions of the 16 & 17 Vict. c. 79, s. 11, apply to an extraordinary vacancy in the office of the co-auditor. The words of that section are: "if an extraordinary vacancy shall happen in the office of councillor, auditor, or assessor;" but the "member of the council" whom the mayor is to name on the 1st of March, as the person before whom, together with the elective auditors, the treasurer is to lay his accounts, is no where called an "auditor."

(*o*) 5 & 6 Will. 4, c. 76, s. 93, App., p. xli. The language of this section is rather vague as to what vacancy is to be filled up.

(*p*) *Ib.*

(*q*) *Id.* ss. 18, 43, App., pp. xi, xix.

(*r*) *Id.* s. 48, App., p. xx.

(*s*) *Id.* s. 53, App., p. xxiii.

(*t*) 7 Will. 4, & 1 Vict. c. 78, s. 5, App., p. lxxxii.

(*u*) *Id.* s. 15, App., p. lxxxiii.

## CHAPTER XV.

### *Of the Resignation of a Corporate Office.*

It has been seen that an elective officer of a corporation must accept the office to which he is chosen, or pay a fine.

The Municipal Corporation Act made no provision with regard to any person who having been elected to a corporate office and having accepted the same and entered upon the duties, should afterwards wish to resign (*a*), but it has since been enacted (*b*) that any such person may at any time resign his office on payment of the fine to which he would have been liable for non-acceptance of such office.

If a corporate officer becomes disqualified (as by bankruptcy or compounding with his creditors) (*c*) he is incapable of resigning his office (*d*).

It seems that if the council have omitted to pass a bye-law fixing the fine for non-acceptance of the office, the party who has accepted it may make a valid resignation thereof, without payment of any fine, and they may accept it (*e*).

It would appear that the resignation should be made to and accepted by the council (*e*). The resignation need not be by deed (*f*).

It seems doubtful how far the acceptance of an incompatible

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(*a*) As to resignation at common law, see Com. Dig. tit. *Franchise* (F. 30), 2 Roll. Abr. 456; *R. v. Tidderley*, Sid. 14; *R. v. Ripon (Mayor)*, 1 Ld. Raym. 563; *R. v. Lane*, 2 Ld. Raym. 1304.

(*b*) 6 & 7 Will. 4, c. 104, s. 8, App., p. lxxiv.

(*c*) *Vide supra*, p. 106.

(*d*) *Hardwick v. Brown*, L. R. 8 C. P. 406.

(*e*) *Haviland v. Hopkins*, 7 M. & W. 178.

(*f*) *R. v. Hughes*, 5 B. & C. 896; *R. v. Ripon (Mayor)*, 1 Ld. Raym. 563; *R. v. Payne*, 2 Chit. R. 367. See also *R. v. Warlow*, 2 M. & S. 75; *R. v. Morton*, 4 Q. B. 146.

office will operate as a resignation or avoidance of a former office. The question was a good deal discussed in *R. v. Patteson* (g), in which all the authorities on the subject are collected. In that case Parke, J., in delivering the judgment of the Court, said it was doubtful whether the general proposition could be supported, that under all circumstances, the acceptance of an incompatible office, by whomsoever the appointment to it is made, absolutely avoids the office; and upon reference to the authorities, the Court thought that this proposition was not made out, but that it must be limited and qualified, and that such acceptance (though it might be ground of amotion) did not operate as an *absolute avoidance* in those cases where a person could not divest himself of an office by his own mere act, but required the concurrence of another authority to his resignation or amotion, unless that authority was privy and consenting to the acceptance of the second office (h).

The Court then, after referring to some of the authorities (i) in which the acceptance of an incompatible office appeared to have been argued as the avoidance of a former office on the ground of an implied surrender or amotion from it, proceeded to observe: "If this view of the subject be correct, it seems to follow that the acceptance of the second office will not absolutely avoid the first, unless it be made by, or with the privity of, that authority which has the power to accept the surrender of the first or to amove from it" (k).

It has been held that the office of councillor was avoided by the acceptance *from the council* of the office of clerk to a court of requests under a local Act (l).

The acceptance of an incompatible office will not operate as an avoidance of a former office if the election or appointment to the latter office was invalid (m).

(g) 4 R. & Ad. 9.

(h) *Id.*, p. 24.

(i) *Gage v. Peacock*, Noy, 12; *Verrior v. Sandwich* (Mayor), 2 Keb. 92; by Ld. Mansfield, C. J., in *R. v. Trelawney*, 3 Burr. 1615; by Buller, J., in *Milward v. Thatcher*, 2 T. R. 87; by Ld. Kenyon, C. J., in *R. v. Pateman*, 2 T. R. 777; by Littledale, J., in *R. v. Hughes*, 5 B. & C. 886.

(k) 4 B. & Ad. 25; see also p. 26.

(l) *Staniland v. Hopkins*, 9 M. & W. 178.

(m) *R. v. Day*, 9 B. & C. 702; see *R. v. Hughes*, 5 B. & C. 886; *R. v. Bond*, 6 D. & R. 333, *contra*.

## CHAPTER XVI.

### *Of Amotion from a Corporate Office.*

It will now be considered in what cases a corporate officer can be removed from his office.

It has already been seen that in the event of a mayor, alderman, or councillor becoming bankrupt or insolvent, and in some other cases, he shall cease to hold the office, and the council are to declare the office to be void, and to give public notice thereof (*a*).

The course pointed out by the Act in such case must be strictly followed (*b*).

At common law the power of amoving an officer for misconduct is incidental to the corporation at large, and is not confined to the body or person in whom the right of electing or appointing such officer is vested (*c*).

It follows from this rule, that as the powers of the corporate body in any corporation are now vested in the council (*d*), consisting of the mayor, aldermen, and councillors (*e*), the power of amotion is vested in them.

The offences for which a corporate officer may be removed may be divided into three classes:—

*First:* Such as relate to his corporate or official character, and amount to breaches of the condition expressly or tacitly annexed to the office (*f*).

Of this nature are the misapplication or embezzlement of the

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(*a*) 5 & 6 Will. 4, c. 76, s. 52, App., p. xxii., *supra*, p. 106.

(*b*) See *R. v. Oxford (Mayor, &c.)*, 6 A. & E. 349; *R. v. Winchester (Mayor, &c.)*, 7 A. & E. 215; *R. v. Phippen, Id.* 966; *R. v. Leeds (Mayor)*, 7 A. & E. 963.

(*c*) *Ld. Bruce's Case*, 2 Stra. 819; *R. v. Doncaster*, Say, 29; S. C. 2 Id. Raym. 1566.

(*d*) 5 & 6 Will. 4, c. 76, s. 6, App., p. vii.

(*e*) *Id.* s. 25, App., xiii., *supra*, p. 87.

(*f*) See *Kyd, Corp.* 62.

corporate funds; or the not accounting for rents received (*g*); non-attendance at several corporate meetings, after proper notice to attend, whereby the business of the corporation has been impeded (*h*); razing entries from the corporate books, or falsifying them (*i*); and the like (*k*).

*Secondly*: Such offences as have no relation to his corporate or official character, but are, in themselves, of so infamous a character as to render the offender unfit to enjoy any public franchise (*l*).

Of this nature are perjury, forgery, or bribery (*m*).

*Thirdly*: Offences of a mixed nature, being not only against the duty of the officer, but also indictable at common law (*l*).

Thus, the taking part in a riotous assembly and assault upon other corporators, whereby the business of the corporation was impeded, has been held to be a good ground for amotion (*n*).

In cases falling within the first and third class an amotion may take place, being for a breach of corporate duty, without any previous proceedings being had in a court of law; but in cases within the second class, there must have been a conviction at law before the party can be amoved (*o*).

In order to render the amotion legal the council should be duly convened for the purpose (*p*).

The party against whom the proceedings are instituted must have notice to appear, which should be served upon him a reasonable time before the meeting (*q*).

(*g*) See *R. v. Chalke*, 1 Ld. Raym. 226; *R. v. Doncaster*, Say, 29; 2 Ld. Raym. 1566.

(*h*) *R. v. Wells*, 4 Burr. 2004. Non-residence has also been held to be a sufficient ground: *R. v. Doncaster*, *ut supra*; *R. v. Trueboy*, 10 Mod. 75. This is now provided for by the 5 & 6 Will. 4, c. 76, s. 52, App., p. xxii.

(*i*) *R. v. Chalke*, *ut supra*.

(*k*) Habitual drunkenness has been held a good cause for removing an alderman, on account of the evil example to others, and his consequent inefficiency to discharge the duties of a magistrate. *R. v. Taylor*, 3 Salk. 231; *Taylor v. Gloucester*, 1 Rol. 409. Such a cause is happily not likely to arise at the present day.

(*l*) 2 Kyd, Corp. 62.

(*m*) *R. v. Tiverton*, 8 Mod. 186.

(*n*) *Haddock's Case*, T. Raym. 439; *R. v. Derby*, Ca. temp. Hardw. 155.

(*o*) *R. v. Richardson*, 1 Burr. 539; *R. v. Liverpool*, 2 Burr. 732; *Haddock's Case*, T. Raym. 439,

(*p*) See *R. v. Sandys*, 2 Barnard, 301; *Taylor v. Gloucester*, 1 Rol. 409]

(*q*) See *R. v. Richardson*, *ut supra*; *Ragg's Case*, 11 Rep. 99.

The notice or summons should state the charge upon which it is proposed to amove the party with sufficient particularity (a), but the same technical precision is not required as in an indictment; thus an allegation that the party "forged, or caused to be forged," a certain document, has been held sufficient, though it would not have been so in an indictment (b).

If the party charged does not appear upon a proper summons, or, appearing, remains silent and does not deny the charge, it must be examined and proved, and all the proceedings must be conducted as though he had denied it. An amotion upon the ground that the silence of the party amounted to a confession has been held to be void; though it is not sufficient to enable him to maintain an action against those who amove him, in the absence of proof of malice (c).

An amotion, though legal, has not the effect of invalidating any act which the corporator has previously done, or in which he has been concerned; but as soon as he is amoved he ceases *ipso facto* to be a corporator, and another may be elected into the vacant place. If the party who has been amoved continue to act, he is a mere usurper; and all such acts are void, and he may be ousted by a *quo warranto*, and punished for such usurpation; but an amotion from one office does not in general impair the title of a party to another office (d).

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(a) *R. v. Chalke*, 1 Lord Raym. 226.

(b) *R. v. Lyme Regis*, Doug. 174.

(c) *Harman v. Tappenden*, 1 East, 562, as to what amounts to a removal, see *R. v. Thomas*, 8 A. & E., 183; *post*, p. 143.

(d) See *Jay's Case*, 1 Vent. 302; *Symmers v. Regem*, Cowp. 503.

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## CHAPTER XVII.

### *Of the Office and Duties of Town Clerk.*

The council have the power to appoint a town clerk, who may be an attorney; but he must not be a member of the council, nor can he be treasurer at the same time (*e*).

He is to hold his office during pleasure (*e*). And it has been held that where a town clerk had been appointed by a resolution of the council, but before any steps were taken to invest him in the office, such resolution was duly rescinded by another at an adjourned meeting of the council; this was a sufficient removal of him from the office (*f*).

The council are empowered to take such security for the due discharge of his official duties as they shall think proper (*g*).

They may fix such salary to be paid to him as they may think reasonable (*e*), which is to be paid out of the borough fund (*h*).

Such salary is the only compensation to which he is entitled for the discharge of duties cast upon him either by the Municipal Corporation Act, or the Parliamentary Reform Act (*i*); but he may be repaid money which he has *necessarily* disbursed (*k*).

Where a town clerk with a fixed salary had been directed by a finance committee appointed by the council to take the

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(*e*) 5 & 6 Will. 4, c. 76, s. 58, App., p. xxiv.

(*f*) *R. v. Thomas*, 8 A. & E. 183.

(*g*) 5 & 6 Will. 4, c. 76, s. 58, *ut supra*. See *Berwick (Mayor)*, v. *Oswald*, 1 E. & B. 295; 3 E. & B. 653; 5 H. L. C. 856.

(*h*) 5 & 6 Will. 4, c. 76, s. 92, App., p. xxxviii.

(*i*) *Jones v. Carmarthen (Mayor)*, 8 M. & W. 605. See also *Thomas v. Swansea (Mayor, &c.)*, 11 M. & W. 83; *Stevenson v. Norwich (Mayor)*, 1 Q. B. 154.

(*k*) *R. v. Hull (Governors of the Poor)*, 2 E. & B. 182.

opinion of counsel and other proceedings to ascertain the validity of a disputed rate, it was held that his charges so far as regarded business done in the direct course of settling the dispute might properly be allowed by the council, as not being covered by the salary for his ordinary duties, and were payable out of the borough fund; that the directions by the finance committee were sufficient; and that, at least after payment, it was no objection that there was no retainer for the extra services under seal (a).

The duties of the town clerk as to making out the list of freemen entitled to vote in parliamentary elections have already been considered (b).

Other duties of the town clerk under the Municipal Corporation Act are as follows:—

To keep the *freemen's roll*, made out on the 1st December, 1835;

To admit and enroll thereon every person whose claim thereto shall have been afterwards established before the mayor;

To keep a true copy of such roll to be perused by any person, without fee, at all reasonable times;

To deliver a copy thereof to any person requiring the same, on payment of a reasonable price (c):

To have copies printed of all the *burgess lists* delivered to him by the overseers, forthwith after such delivery (d);

To deliver a copy of any such list to any person requiring the same, on payment of a reasonable price (e);

To cause a copy of all such lists to be fixed on the town hall, or in some other public place in the borough, every day during the week preceding the 15th of September (f);

(a) *R. v. Prest*, 16 Q. B. 32.

(b) *Supra*, pp. 47 *et seq.*

(c) 5 & 6 Will. 4, c. 76, s. 5, App., p. vii., *vide supra*, p. 49.

(d) *Id.* sec. 15, App., p. x. The overseers are to deliver these lists to the town clerk on the 1st September in each year, 20 & 21 Vict. c. 50, s. 7, App., p. cl., *vide supra*, p. 73.

(e) 5 & 6 Will. 4, c. 76, s. 15, App., p. x.

(f) *Ib.*, and see *R. v. Rochester (Mayor)*, 7 E. & B. 910, 923; E. B. & E. 1024.

To cause list of claimants and persons objected to, to be fixed in like manner during the eight days next preceding the 8th of October (*g*). If he neglects or refuses to receive, print, and publish the lists as required, he is liable to a penalty of £50, to be recovered by action (*h*);

To keep a copy of such last mentioned lists to be perused by any person without fee, at all reasonable hours during these eight days (*i*). If he refuses to allow such lists to be perused by any person having a right thereto, he is liable to the same penalty (*h*);

To deliver a copy of each of such lists to any person requiring the same, on payment of not more than one shilling for each copy (*i*):

To produce the burgess lists and the lists of claimants and persons objected to at the opening of the revision court (*k*);

To keep the revised burgess lists delivered to him by the mayor (*l*);

To make up the *burgess roll* from the same, on or before the 22nd of October (*l*);

To have copies of the burgess roll printed for sale at a reasonable price (*m*);

To pay over the monies arising from the sale of the burgess roll and of all lists to the treasurer (*m*);

He is to provide nomination papers at the election of councillors, auditors, or assessors, and to give notice to each person nominated (*n*); to publish the names of the persons nominated (*o*).

(*g*). 5 & 6 Will. 4, c. 76, s. 17 (*Ib.*). For the form of the list of claimants, see Sched. D., No. 4; of the list of persons objected to, *Id.* No. 5, App., p. lxix.

(*h*) 5 & 6 Will. 4, c. 76, s. 48, App., p., xx.

(*i*) *Id.* s. 17, App., p. x.

(*k*) *Id.* s. 18, App., p. xi.

(*l*) *Id.* s. 22, App., p. xii.

(*m*) *Id.* s. 23, App., p. xiii.

(*n*) 38 & 39 Vict. c. 40, s. 1 (2, 3), App., p. cxcxiii, and see *ante*, pp. 89, 133.

(*o*) *Ib.* (3) and *ante*, p. 90.

Under the Ballot Act he is required to keep for one year among the borough records all documents relating to an election by ballot (a) which have been forwarded to him by the returning officer, and then, unless otherwise directed by an order from the county court having jurisdiction in the borough, or of any tribunal in which an election shall be questioned, and, subject to the directions of the council, to cause them to be destroyed (b).

No person is to be allowed to inspect any rejected ballot papers in his custody, except under a similar order (c).

All documents forwarded by the returning officer to the town clerk other than ballot papers and counterfoils, are to be open to public inspection at such times, and under such regulations as to fees, as may be prescribed by the council, with the consent of one of the secretaries of state (d).

(a) 35 & 36 Vict. c. 33, Sched. 1, rule 64, App., p. ccxxv.

(b) *Id.* rr. 39, 64, App., pp. ccxxii., ccxxv.

(c) *Id.* rr. 40, 64. The county court may grant such order on being satisfied by evidence on oath that the inspection or production of such ballot papers is required for the purpose of a prosecution for an offence in relation to ballot papers, or for the purpose of any proceeding questioning an election or return. An appeal lies, as in other cases, in the county court: *Id.* See further, r. 41, App., p. ccxxii.

(d) *Id.* rr. 42, 64, App., pp. ccxxiii., ccxxv. See as to the production by the town clerk of any document in his possession, rr. 43, 64 (*Ib.*)

These rules, as applicable to municipal elections, are not very easy to follow. Rule 39 relates to the *custody* and *destruction*, and rule 42 to the *inspection*, of certain documents sent by the returning officer to the clerk of the Crown in Chancery in parliamentary elections; by r. 64 all documents which, in the case of such elections are forwarded to the clerk of the Crown in Chancery, are to be delivered in municipal elections to the town clerk, and are to be *kept* by him among the records of the borough; and that rule goes on to say, "the provisions of Part I. of this Schedule" (relating to parliamentary elections), "with respect to the *inspection*, production, and *destruction* of such ballot papers and documents, and to the copies of such documents, shall apply respectively to the ballot papers and documents so in the custody of the town clerk, with these modifications; \* \* \* the regulations for the *inspection* of documents, &c., shall be prescribed by the council of the borough, with the consent of one of Her Majesty's principal secretaries of state; and subject, as aforesaid, the town clerk, in respect of the *custody* and *destruction* of the ballot papers and other documents coming into his possession in pursuance of this Act, shall be subject to the directions of the council of the borough."

From the wording of these latter "modifications" it would seem as if the term of the *custody* and the time of the *destruction* of the ballot papers, &c., is to be subject to the directions of the council.

He is also to keep the voting papers at the election of aldermen among the records of the borough (*e*) ;

Where a borough is divided into *wards*, he is to keep a copy of the particulars of the division among the public documents of the borough (*e*) ;

He is to sign the summonses to attend the council (*g*), and also the notice for the meeting of the council convened to supply a vacancy in the office of mayor (*h*).

He is also to cause a true copy of the table of fees in force for the time being to be hung up in a conspicuous part of the rooms where the business of his office is transacted; where the justices of the borough sit for transacting their business; where the court of quarter sessions is held; and in the borough court of record (*i*).

And generally he is to have the charge and custody of all charters, deeds, muniments, and records of the borough, or relating to the property thereof, which are to be kept by him in such place as the council may direct (*k*).

The town clerk has no lien on the corporation muniments, which he holds merely in that capacity; though he has on papers, with respect to which he has done work as an attorney or solicitor (*l*).

If within three days after receiving a notice under the hands of three or more of the council, he neglects to deliver up all books, papers, and writings in his custody relating to the execution of the Municipal Corporation Act, or to give satisfaction to the council respecting the same, he may be proceeded against summarily before two justices of the peace for the county or other jurisdiction in which he may reside, who are empowered to commit him to the house of correction, until he shall have delivered them up, or have given such satisfaction respecting them (*m*).

(*e*) 7 Will. 4 & 1 Vict. c. 78, s. 14, App., p. lxxxiii.

(*f*) 5 & 6 Will. 4, c. 76, s. 39, App., p. xvii.

(*g*) *Id.* s. 69, App., p. xxix.

(*h*) 16 & 17 Vict. c. 79, s. 9, App., cxxxviii.

(*i*) 5 & 6 Will. 4, c. 76, s. 125, App., p. liii.

(*k*) *Id.* s. 65, App., p. xxvii.

(*l*) *R. v. Sankey*, 5 A. & E. 43.

(*m*) 5 & 6 Will. 4, c. 76, s. 60, App., p. xxv.

The complaint is to be made by some one authorized by the council for that purpose before one justice, who is to issue his warrant to bring the defendant before two justices (*a*). And it has been held that county justices may hear and determine such complaint, though the officer resides within the borough, and there are borough magistrates (*b*). In that case Lord Denman, C. J., said: "If the magistrates of the county have the power in this case, it is better that they should exercise it than the magistrates of the borough."

As such proceedings are substantially of a civil nature, the warrant of commitment cannot be legally executed on a Sunday (*c*).

The warrant of commitment should contain the requisite allegations to show that the two justices had jurisdiction to grant it; *e. g.*, that a complaint had been made to one justice, and that he had issued his warrant to bring the defendant before two justices (*d*).

The corporation are not precluded by the Act from any remedy they may have by action; but they cannot proceed both by action and in a summary way for the same cause (*e*).

The town clerk is also to deliver to the council, at such times during the continuance of his office as they shall direct, or within three months after the expiration thereof, a true account in writing of all matters committed to his charge, and of all monies received by him for the purposes of the Municipal Corporation Act; and upon his neglect to do so, he may be proceeded against in a summary way, as in the case of non-delivery of papers, and may be committed to gaol till he shall have delivered such account. If any money is found to be due from him, it may be levied by distress, and in default thereof he may be committed to gaol for three calendar months, unless he shall sooner pay what was due from him, or a composition agreed to by the council (*e*).

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(*a*) 5 & 6 Will. 4, c. 76, s. 60, App., p. xxv.

(*b*) *Re Gateshead JJ.*, 6 A. & E. 550, n.

(*c*) *Eggington's Case*, 2 E. & B. 717. See 29 Car. 2, c. 7, s. 6.

(*d*) *Eggington v. Lichfield (Mayor, &c.)*, 5 E. & B. 100.

(*e*) 5 & 6 Will. 4, c. 76, *ut supra*. See *Lichfield, Mayor, &c., v. Simpson*, 8 Q. B. 65.

The town clerk cannot be treasurer (*f*), nor can he be elected assessor or auditor (*g*), and he is exempt from serving on juries of the county, but not in the borough (*h*), unless he is, as is usually the case, a certificated attorney, when he is exempt from serving on juries altogether.

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(*f*) 5 & 6 Will. 4, c. 76, s. 58, App., p. xxiv.

(*g*) *Id.* s. 37, App., p. xvii.

(*h*) 33 & 34 Vict. c. 77, Sched.

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## CHAPTER XVIII.

### *Of the Office and Duties of Treasurer.*

The council are empowered also to appoint a treasurer ; he must not be a member of the council, nor can he be town clerk at the same time (a) ; nor can he be elected auditor or assessor (b).

He is to hold his office during pleasure (c), in the same manner as the town clerk.

In the case of a vacancy in the office, the council are to appoint a successor within twenty-one days from the happening of the vacancy (c).

The council have power to fix his salary, and may take a security for the discharge of his duties (d), in the same manner as in the case of the town clerk (a).

The duties of the treasurer, under the Municipal Corporation Act, are as follows :—

To receive all penalties and forfeitures, recovered in a summary way before the justices of the borough, to the credit of the borough fund, whether the same are made payable to the Crown or to the corporation ; except penalties to informers or

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(a) 5 & 6 Will. 4, c. 76, s. 58, App., p. xxv.

(b) *Id.* s. 37, App., p. xvii.

(c) 6 & 7 Vict. c. 89, s. 6, App., p. cxii. (By the 5 & 6 Will. 4, c. 76, s. 58, the appointment was to be annual. In a note to that sec., App., p. xxiv., by an error, reference is made to the 7 & 8 Vict. c. 93, s. 6, as making the appointment of the treasurer to be during pleasure).

(d) Where sureties had entered into a bond for the performance of his duties by a treasurer elected under the 5 & 6 Will. 4, c. 76, "during the whole time of his continuing in the said office in consequence of the said election, or under any annual or other future election to the said office ;" and the treasurer, having been annually appointed under that Act, c. 76, was reappointed during pleasure under the 6 & 7 Vict. c. 89, it was held that the sureties were not discharged by this change in the tenure of the office, as its nature and duties remained the same : *Berwick (Mayor &c.)*, v. *Oswald*, 1 E. & B. 295 ; 3 E. & B. 653 ; 5 H. L. Ca. 853. See also *Dartmouth (Mayor, &c.)*, v. *Tilly*, 7 E. & B. 97 ; 26 L. J. Q. B. 90.



parties aggrieved, or under any Act relating to the customs, excise, and post-office, or to trade or navigation (*e*), or to the revenue (*f*).

To receive all monies due from other officers under the Act, unless some other person has been authorized by the council to receive the same (*g*). He is also to receive the proceeds of advowsons sold by the corporation (*h*); and by direction of the council he may apply such proceeds towards the liquidation of any debt contracted by the corporation before the passing of the Municipal Corporation Act (*i*).

He is not to pay any money on account of the corporation, except in cases provided for by statute, unless upon an order in writing of the council, signed by at least three members thereof, and countersigned by the town clerk, or by the order of the sessions, or of a justice, in cases provided for by the Municipal Corporation Act (*k*). He is, however, directed by statute to pay the salary of the police magistrate, if there is one appointed for the borough (*l*).

He is, at such times and in such manner as the council shall direct, to deliver to them an account of all monies received and disbursed by him, with proper vouchers. And for a wilful neglect of duty in this respect, he is liable to be proceeded against summarily in the same way as a town clerk (*m*).

He is also to keep similar accounts in books, which at all seasonable times are to be open to the inspection of any of the aldermen or councillors; and he is to submit the same to the auditors on the 1st of March and the 1st of September in each year; and after such accounts have been audited in September, he is to cause an abstract thereof to be printed, which is to be

(*e*) See *Seamen's Hospital Society v. Liverpool (Mayor, &c.)*, L.R. 4 Exch. 180.

(*f*) 5 & 6 Will. 4, c. 76, s. 126, App., p. liii. See *Reigate (Mayor, &c.)*, v. *Hart*, L. R. 3 Q. B. 244; *Winn v. Mossman*, L. R. 4 Exch. 292.

(*g*) *Id.* s. 60, App., p. xxv.

(*h*) *Id.* s. 139, App., p. lvii.

(*i*) 6 & 7 Will. 4, c. 104, s. 3, App., p. lxxiii.

(*k*) 5 & 6 Will. 4, c. 76, s. 59, App., p. xxv.

(*l*) *Id.* s. 99, App., p. xliii.

(*m*) *Id.* s. 60, *ut supra*. See *supra*, p. 145.

open to the inspection of the ratepayers, and a copy of which is to be delivered to any ratepayer applying for the same on payment of a reasonable price (*a*).

The treasurer, like the town clerk, is exempt from serving on county juries, but not on juries for the borough (*b*)

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(*a*) 5 & 6 Will. 4, c. 76, s. 93, App., p. xli.

(*b*) 33 & 34 Vict. c. 77, Sched.

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## CHAPTER XIX.

### *Of the Duties of the Coroner.*

It is not intended to enter into any disquisition as to the general duties of a coroner, as it is conceived that it would be foreign to the purpose of this work. It is proposed merely to consider such matters as are exclusively incidental to coroners appointed by a town council, under the 62nd section of the Municipal Corporation Act (c).

The circumstances under which the appointment is to be made, the tenure of the office, and other preliminary matters, have been set forth in a previous chapter (d).

A coroner cannot be appointed at an adjourned quarterly meeting of the council, unless a summons and notice have been previously served on the members of the council, stating that such business was to be transacted (e).

It has been decided that a coroner so appointed is not a corporate officer within the meaning of the 9 Anne c. 20 (f), or of the 6 & 7 Vict. c. 89, s. 5 (g).

The coroner may appoint a barrister or an attorney as a deputy, in case of illness or unavoidable absence ; but the mayor or two of the borough justices must certify the necessity of such appointment (h).

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(c) App., p. xxvi. As to the power of county coroners to act in boroughs where there is no court of quarter sessions, see 5 & 6 Will. 4, c. 76, s. 64, App., p. xxvii. See also 6 & 7 Vict. c. 12, as to where inquests are to be held when it is not known where the deceased died ; or where the cause of death occurs in one place and his death in another. And see *R. v. Ellis*, 2 C. & K. 470.

(d) Chap. XIII. on the power of the council. See p. 132.

(e) *R. v. Grimshaw*, 10 Q. B. 747. See 5 & 6 Will. 4, c. 76, s. 69, App., p. xxix.

(f) *R. v. Grimshaw*, 5 Dowl. & L. 249.

(g) App., p. cxii. ; S. C.

(h) 6 & 7 Will. 4, c. 105, s. 6, App., p. lxxv. And see 5 & 6 Will. 4, c. 76, s. 63, App., p. xxvii.

It has been held that the fact of the coroner being engaged in holding an inquest is a sufficient cause for the appointment of a deputy for the purpose of holding another inquest (a).

The inquisition, when held before a deputy, is properly described as being taken before the principal coroner, and is properly signed in the name of the principal coroner, "by A. B. his deputy" (a).

If the jury are sworn, and the proceedings begin before the deputy, he should conclude them, though the principal coroner should be present in the course of holding the inquest (a).

Where a borough coroner has been appointed, no other but himself or his deputy is to take inquests in the borough (b).

The coroner is to have a fee of 20s. for any inquest, and also an allowance for his travelling expenses at the rate of 9d. per mile, when he is compelled to travel more than two miles from his place of abode (c).

His ordinary expenses are to be paid out of the borough fund, by order of the court of quarter sessions (b).

By a subsequent statute, relating to the payment of coroners' expenses generally, it is enacted (d) that an account of all sums

(a) *R. v. Perkin*, 7 Q. B. 165.

(b) 5 & 6 Will. 4, c. 76, s. 62, App., p. xxvi.

(c) *Ib.* See *R. v. Oxfordshire JJ.*, 2 B. & A. 203; *R. v. Warwickshire JJ.*, 5 B. & C. 431; *R. v. Carmarthenshire JJ.*, 2 New Sess. Ca. 679.

(d) 7 Will. 4 & 1 Vict. c. 68, s. 3, enacts that "every coroner of any borough shall, within four months after holding any inquest, cause a full and true account of all sums paid by him under the provisions of this Act, including as aforesaid, to be laid before the town council of such borough; and all such accounts shall be accompanied by such vouchers as under the circumstances may to such justices or council respectively seem reasonable; and such justices or council respectively may, if they shall think fit, examine the said coroner on oath as to such account, and on being satisfied of the correctness thereof such justice or council respectively shall make an order on the treasurer of the said riding, division or district, or county, or of the said borough (as the case may be), for payment to the said coroner not only of the sum due to him on such account but also of a sum of six shillings and eightpence for every inquest holden by him as aforesaid, over and above all other fees and allowances to which he is now by law entitled; and the treasurer of any county, riding, division, or district on whom any such order shall be made shall, out of the monies in his hands arising from the county rates, and the treasurer of any borough on whom any such order shall be made, shall, out of the monies in his hands on account of the borough fund, pay to the said coroner the sum mentioned in such order, without any

paid by any coroner of a borough shall be laid before the town council, accompanied by vouchers ; and the council may allow the same, and order them to be paid by the treasurer, and also the sum of 6s. 8d. for every inquest, *over and above all other fees and allowances* to which he is by law entitled.

It would seem, therefore, that a borough coroner is entitled by this Act to the fee of 6s. 8d., over and above the fee of 20s. before mentioned ; but it is remarkable that the last-mentioned statute makes no reference to the Municipal Corporation Act (*e*).

Every borough coroner is required, by the 1st of February, to make a yearly return to the Secretary of State of all inquests held by him relating to the death of any person for the year ending on the preceding 31st of December (*f*).

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abatement or deduction whatever ; and every such treasurer shall, on pass his accounts, be allowed all sums which he shall pay in pursuance of any such order as aforesaid."

(*e*) This matter has remained unaltered since 1837.

(*f*) 5 & 6 Will. 4, c. 76, s. 63, App., p. xxvii.

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## CHAPTER XX.

### *Of the Watch Committee and the Borough Constables.*

The council, as has been stated (*a*), are from time to time to appoint a watch committee, consisting of a sufficient number of their own body, together with the mayor for the time being (*b*).

To constitute a valid meeting of such committee, there must not be less than three members present (*c*).

The committee have the power of appointing constables for the borough, who are to be sworn before a justice of the borough (*c*).

Such constables are to have power to act as such, not only within the borough, but also within the county in which the borough is situated, and within any other county being within seven miles of the borough, and within all liberties of such county (*d*).

The watch committee may make regulations for the management of the constables; and either they, or two justices of the borough may dismiss a constable for neglect of duty (*e*).

The council may agree with the justices of a county in or adjoining to which the borough is situated to consolidate the county and borough police establishments; and in such case either the county or borough constables have all the powers, &c., throughout the county and the borough, as county constables

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(*a*) *Supra*, Chap. XIII.

(*b*) 5 & 6 Will. 4, c. 76, s. 76, App., p. xxxii.

(*c*) 5 & 6 Will. 4, c. 76, s. 76, *ut supra*. Upon the appointment of borough constables, all provisions in local acts as to watching, &c., are to cease, and the watch-houses, accoutrements, &c., are to be given up. *Id.* s. 84, App., p. xxxv.

(*d*) *Id.* s. 76, *ut supra*. See *Maberley v. Titterton*, 7 M. & W. 540; *Penney v. Slade*, 5 N. C. 469.

(*e*) 5 & 6 Will. 4, c. 76, s. 77, App., p. xxxiii.; see 28 & 29 Vict. c. 35, s. 5, App., p. clxxvi.

have within a county (*f*). The memorandum of such agreement is to be under the hand of two or more county justices and countersigned by the clerk of the peace ; and is to be under the seal of the borough (*g*).

Such an agreement can be put an end to only by a six months' notice from either party, similarly signed and countersigned, or sealed ; and the notice must be agreed to by three-fourths of the justices at general or quarter sessions, or three-fourths of the council respectively (*g*), and the sanction of the Secretary of State is also required for the termination of the agreement (*h*).

In the case of such a consolidated police establishment the general disposition and government of all the constables is vested in the chief constable of the county. The power of dismissing borough constables by the watch committee or two borough justices is suspended and can be exercised by the chief constable ; who must however report the fact, with his reasons, to the mayor. Thereupon the watch committee are forthwith to appoint another borough constable, unless by the agreement the appointment is vested in the chief constable. A borough constable who has been so dismissed can be re-appointed without the consent of the chief constable (*i*).

The borough constables have the power to apprehend any idle and disorderly persons, who are either disturbing the public peace, or are suspected of an intention to commit felony (*k*).

The constable attending at the watch-house may take bail by recognizance from persons brought before him for any petty misdemeanors ; such recognizance being conditioned for the appearance of the parties before a justice at some specified time and place within two days (*l*).

(*f*) Under 2 & 3 Vict. c. 93.

(*g*) 3 & 4 Vict. c. 88, s. 14, App., p. c.

(*h*) 19 & 20 Vict. c. 69, s. 20 : "No agreement made under section 14 of 3 & 4 Vict. c. 88, shall be put an end to without the sanction of one of Her Majesty's principal Secretaries of State."

(*i*) 3 & 4 Vict. c. 88, s. 15, App., p. c.

(*k*) 5 & 6 Will. 4, c. 76, s. 78, App., p. xxxiii. As to penalties on borough constables for neglect of duty, see 5 & 6 Will. 4, c. 76, s. 80 ; and as to the penalties for assaults upon them, see *Id.* s. 81, App., p. xxxv.

(*l*) 5 & 6 Will. 4, c. 76, s. 79, App., p. xxxiii.

In default of appearance at the time and place appointed, or within one hour after, the recognizance is to be forfeited; and the justice is to cause a record of the recognizance to be drawn up, to be signed by the constable, and is to return it to the next general or quarter sessions for the borough, or where there are no such sessions then to those of the county in which the borough is situate, with a certificate at the back signed by the justice that the party has not complied with the obligation; but the justice may, on the application of any person on behalf of the party charged, postpone the time of hearing and enlarge the recognizance (a).

If a constable is guilty of neglect of duty, or of disobedience of a lawful order, and is convicted before two justices, he may be imprisoned for ten days, or fined 40s. or be dismissed (b).

Any person who assaults or resists a constable in the execution of his duty, or aids or incites any other person so to assault or resist, is liable to a penalty of £5; or he may be indicted for the offence (c).

The watch committee, subject to the approbation of the council, are to fix the salaries of the constables, which are to be paid by the treasurer (d).

The watch committee have also power, subject to the approbation of the council, to award rewards to constables for extraordinary diligence or exertion, or as a compensation for wounds or injuries, or as a superannuation allowance (e); and to direct the payment of all other charges and expenses for the purpose of the constabulary force (f).

Thus they may, with the approbation of the council, order the payment of the costs of defending borough constables on a prosecution incurred by them in the discharge of their duty; but the council themselves cannot originate such an order, even

(a) 5 & 6 Will. 4, c. 76, s. 79, App. p. xxxiii.

(b) *Id.* s. 80, App., p. xxxiv.

(c) *Id.* s. 81 (*Ib.*)

(d) 5 & 6 Will. 4, c. 76, s. 82 (*Ib.*) As to the watch-rate, *vide post*, Chap. XXVII.

(e) See further 22 & 23 Vict. c. 32, App. p. clvi.

(f) 5 & 6 Will. 4, c. 76, s. 82, App. p. xxxiv.



although the payment may have been recommended to them by a report from the watch committee (g).

If any extraordinary expenses have been incurred in the apprehension of offenders or the execution of the orders of any justice for the borough, such expenses are to be examined and approved by him, and may then be ordered to be paid by the council (h).

But the Act does not authorize the payment to a police inspector of the costs incurred by him in prosecuting the proprietor of a newspaper for a libel on himself (i).

Special constables (k) are to be appointed by two justices yearly in October; they are to act when required to do so by warrant of any justice; they are to receive 3s. 6d. per day each, for any day they are called out to act (l).

The provisions of this section do not supersede the general authority given to justices of any town, &c. (k), to appoint special constables on information that a riot is apprehended (m).

The watch committee are to make quarterly reports to the Secretary of State of the number of constables appointed, of the description of their arms and accoutrements, of their salaries, and of the number and situation of the station-houses in the borough: and also a copy of all rules made for the regulation of the constables (n).

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(g) *R. v. Thompson*, 5 Q. B. 477; D. & M. 497.

(h) 5 & 6 Will. 4, c. 76, s. 82, App., p. xxxiv.

(i) *R. v. Liverpool (Mayor, &c.)*, 41 L. J. Q. B. 175.

(k) See 1 & 2 Will. 4, c. 41.

(l) 5 & 6 Will. 4, c. 76, s. 83, App., p. xxxiv.

(m) *R. v. Hulton*, 13 Q. B. 592.

(n) 5 & 6 Will. 4, c. 76, s. 86, App., p. xxxvi.

## CHAPTER XXI.

### *Of the Borough Justices and their Clerk.*

Upon the petition of the council of the boroughs named in Schedules (A) and (B) of the Municipal Corporation Act, the Crown may issue a commission for certain persons to act as justices of the peace therein (*a*).

No qualification by estate is required for a borough justice, nor is it necessary that he should even be a burgess (*b*); nor is a party disabled from acting as a justice by reason of his being liable to be rated to any borough rate (*c*). An attorney or solicitor may be appointed a justice for a borough, though he cannot be for a county (*d*).

A justice is required to reside or to occupy premises (*e*) within the borough, or within seven miles thereof (*f*).

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(*a*) 5 & 6 Will. 4, c. 76, s. 98, App., p. xliii.

(*b*) *Id.* s. 101, App., p. xlv.

(*c*) *Id.* s. 128, App., p. liv.; see also 30 & 31 Vict. c. 115, s. 2, App., p. cxcviii.

(*d*) See 5 Geo. 2, c. 18, ss. 2, 4.

(*e*) 24 & 25 Vict. c. 75, s. 3, App., p. clxix.

(*f*) 5 & 6 Will. 4, c. 76, s. 98, *ut supra*. There is some doubt how these seven miles are to be measured, whether "as the crow flies," according to the popular expression, or by the nearest road. The 9th section of the Municipal Corporation Act which defined the franchise of the new burgesses, provided, "that in every case provided in *this Act*, the distance of seven miles shall be computed by the nearest public road or way by land or water." This section is wholly repealed by 32 & 33 Vict. c. 55, s. 1, App., p. ccvii., which contains fresh enactments as to the burgess franchise, and ends with a proviso that "the respective distances mentioned in *this Act* shall be measured in the manner directed by section 76 of" 6 & 7 Vict. c. 18, *i.e.*, "as the crow flies" (*vide supra*, p. 62); but the distance within which a justice is required to live is not mentioned in the 32 & 33 Vict. c. 55, so that, as section 9 of 5 & 6 Will. 4, c. 76, is repealed, there is no enactment as to the manner in which the seven miles in the case of the residence of a justice are to be measured. It may, however, be surmised that the Courts would consider the measurement on the horizontal plane to be

The mayor is *ex officio* a justice for the borough during his year of office and the year following (g).

Where there is a recorder he is also a justice *ex officio* (h).

No person can act as a justice till he has taken the usual oaths required to be taken by justices of the peace (i), and has also made a declaration that he will faithfully and impartially execute the office to the best of his judgment and ability (k).

The oaths and declaration may be taken before the mayor or any two aldermen or councillors of the borough (l).

The ordinary borough justices are not permitted to act in that capacity either in courts of gaol delivery, or at general or quarter sessions, nor in making or levying any county rate, or rate in the nature of a county rate (m).

The justices have the power of appointing a clerk, removable at pleasure (n), who shall not be an alderman or councillor, or the clerk of the peace of the borough or county in which the borough is situate, or his partner, nor is he to be concerned directly or indirectly in the prosecution of offenders committed by the borough justices; if any person offends in the premises he is liable to a penalty of £100 (o).

It has been held that a clerk to the justices, engaged in the prosecution of a person committed by county

the correct one, for the reasons, that the 32 & 33 Vict. is in *pari materia* with the 5 & 6 Will. 4, c. 76; that the legislature has in recent statutes adopted this system of measurement (see 2 & 3 Vict. c. 47, s. 2; 16 & 17 Vict. c. 127, s. 13; 17 & 18 Vict. c. 83, s. 7); and that the Courts of law have of late adopted this method of computation; see *R. v. Saffron Walden (Inhabitants)*, 9 Q. B. 76; *Lake v. Butler*, 5 E. & B. 92; *Jewel v. Stead*, 6 E. & B. 350.

(g) 5 & 6 Will. 4, c. 76, s. 57, App., p. xxiv.

(h) *Id.* s. 103, App., p. xlv.

(i) *Semble*, the oath or declaration of allegiance, and the judicial oath or declaration. See 31 & 32 Vict. c. 72, App., p. cciii.

(k) 5 & 6 Will. 4, c. 76, s. 104, App., p. xlv. See the form there given.

(l) *Ib.*, and 6 & 7 Will. 4, c. 105, s. 3, App., p. lxxv.

(m) 5 & 6 Will. 4, c. 76, s. 101, App., p. xlv.

(n) *Id.* s. 102 (*Ib.*)

(o) 24 & 25 Vict. c. 75, s. 5, App., p. clxix.

justices is not liable to this penalty (a), but that he may be indicted (b).

The fees payable to the clerk are to be fixed by the council, subject to the allowance of the Secretary of State (c).

The justices have also the power of appointing special constables, as has been already stated (d).

They are exempt from serving on juries in the borough, or the county in which the borough is situate (e).

They are empowered to summon witnesses to appear before them; and if a person so summoned does not appear, having no reasonable excuse for his absence, or if he refuses to give evidence, he is liable to a penalty not exceeding £5 (f).

If any person is adjudged to pay a sum of money for any offence under the Corporation Act, and neglects to do so, the same may be levied by distress; and in default thereof he may be imprisoned by order of the justices (g) for the terms mentioned in the Small Penalties Act, 1865 (h).

An appeal is given from any summary conviction under the Act to the quarter sessions, but a written notice of appeal is required to be given within three days after the conviction, and seven clear days before the sessions (i).

No conviction, order, or warrant (k) of justices is to be quashed for want of form, or to be removed by *certiorari*; and no warrant of commitment is to be held void on account of any defect, provided there is a good conviction to sustain the same;

(a) *Coe v. Lawrance*, 1 E. & B. 516. This decision was under sec. 102 of 5 & 6 Will. 4, c. 76, which is repealed as to this provision, and re-enacted almost in the same words by 24 & 25 Vict. c. 75, s. 5.

(b) *R. v. Fox*, 1 E. & E. 729, 746; 28 L. J. M. C. 157.

(c) 5 & 6 Will. 4, c. 76, s. 124, App., p. lii. See also *R. v. Gloucester (Mayor, &c.)*, 5 Q. B. 862.

(d) *Id.* s. 83, *supra*, p. 159.

(e) *Id.* s. 122, App., p. lii.; and see 33 & 34 Vict. c. 77, Sched.

(f) *Id.* s. 128, App., p. liv.

(g) *Id.* s. 129 (*Id.*) The form of conviction is given in sec. 130 (*Id.*)

(h) 28 & 29 Vict. c. 127, s. 4. *Scil.* For any penalty not exceeding 10s. not exceeding seven days; exceeding 10s. and not exceeding £1, fourteen days; exceeding £1 and not exceeding £2, one month; exceeding £2 and not exceeding £5, two months. The word "penalty" includes any sum recoverable in a summary manner. *Id.* s. 3.

(i) 5 & 6 Will. 4, c. 76, s. 131, App., p. lv.

(k) See *R. v. Ripon JJ.*, 7 A. & E. 417.

nor is a distress to be deemed unlawful on account of informality in the proceedings (*l*).

All actions (*m*) against justices for anything done (*n*) in pursuance of the Corporation Act, must be laid and tried (*o*) in the county where the fact was committed, and must be commenced within six months after the fact committed; written notice of the action must be given to the defendant one calendar month before its commencement (*p*); the defendant may plead the general issue; and give the special matter in evidence (*q*) and if he has made a sufficient tender of amends before action brought, or has paid a sufficient sum into court, the plaintiff is not to recover; and if the defendant has judgment he is to recover his full costs as between attorney and client (*r*).

Under some former Acts of parliament (*s*) certain powers as to building and regulating borough gaols (*t*) had been vested in the general or quarter sessions. Most of these powers were vested in the council, by one of the Corporation Acts (*u*).

But these enactments are now repealed by "The Prison Act, 1865" (*v*), the provisions of which will be considered in a subsequent chapter (*w*).

Doubts having been entertained as to the power of appointing overseers in boroughs, and as to the authority of borough

(*l*) 5 & 6 Will. 4, c. 76, s. 132, App., p. lv.

(*m*) Including *replevin*, *Jones v. Johnson*, 6 Exch. 133.

(*n*) See *infra*, n. (*r*).

(*o*) See *R. v. Mitchell*, 2 Q. B. 636; 2 G. & D. 274.

(*p*) See also 5 & 6 Vict. c. 97, s. 4.

(*q*) See *Mellor v. Leather*, 1 E. & B. 619.

(*r*) 5 & 6 Will. 4, c. 76, s. 133, App., p. lv. (See 5 & 6 Vict. c. 97, s. 2.)

This section is not limited to the protection of justices, but applies to all proceedings against "any person" (including a corporation; see *Cortis v. The Kent Waterworks Company*, 7 B. & C. 314; *Boyd v. The Croydon Railway Company*, 4 N. C. 669); "for anything done" in pursuance of the Act; but it does not apply to a proceeding brought against a party for omitting to do something required by the Act; thus, in an action against an overseer for not signing a burgess list, as required by sec. 15, it was held that a notice of action was not necessary: *King v. Burrell*, 12 A. & E. 460.

(*s*) 4 Geo. 4, c. 64; 5 Geo. 4, c. 85; 5 & 6 Will. 4, c. 38.

(*t*) As to these powers, see *Thompson v. Raikes*, 1 A. & E. 863.

(*u*) 7 Will. 4, and 1 Vict. c. 78, ss. 37, 38; now repealed.

(*v*) 28 & 29 Vict. c. 126, App., p. clxxvi.

(*w*) Chap. XXIV.

justices in other matters relating to the poor under the statute of Elizabeth (a), it has been enacted that the justices having jurisdiction in the borough (including county justices) (b) are to have the exclusive right of appointing overseers (c); and also that they are to exercise the same powers in regard to the relief of the poor as county justices (d).

It may be observed in this place, that in all boroughs which have not a separate court of quarter sessions under the Corporation Act the county justices are also to exercise jurisdiction (e).

(a) 43 Eliz. c. 2. See *R. v. Preston*, 12 Q. B. 891; 3 New Sess. Ca. 313.

(b) 15 & 16 Vict. c. 38, App., p. cxxxv.

(c) 12 & 13 Vict. c. 8, s. 1, App., p. cxvii.

(d) 12 & 13 Vict. c. 64, s. 1, App., p. cxix.

(e) 5 & 6 Will. 4, c. 76, s. 111, App., p. xlvii. This was so before this statute, where there was no *non intromittant* clause in the charter of incorporation: *Blankley v. Winstanley*, 3 T. R. 279. See also *R. v. Amos*, 2 B. & A. 533; *Reigate (Mayor) v. Hart*, L. R. 3 Q. B. 244, 248; *Wakefield (Board of Health)*, Apps., and *West Riding and Grimsby Railway Company*, Resps., 6 B. & S. 794. As to the power of county justices to hear and determine complaints against corporate officers for wilfully neglecting or refusing to give up books, papers, &c., *vide supra*, p. 147.

## CHAPTER XXII.

### *Of the Police Magistrates.*

The council, if they think it requisite that a salaried police magistrate or magistrates should be appointed in the borough, have the power of making a bye-law fixing the amount of salary. Upon such bye-law being transmitted to the Secretary of State, he may appoint one or more persons, according to the number fixed in the bye-law. The person so appointed must be a barrister of not less than five years' standing; and he is to hold his office *during the pleasure of the Crown* (*f*). His salary is to be paid out of the borough fund. In case of a vacancy it is necessary that a fresh application should be made by the council (*g*).

The recorder of the borough cannot be the police magistrate (*h*).

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(*f*) As a police magistrate unquestionably holds a judicial office, this is a most objectionable tenure. The recorder holds his office during good behaviour. Even the clerk of the peace, who is in no way a judicial officer, has the same tenure as the recorder. See the next chapter.

(*g*) 5 & 6 Will. 4, c. 76, s. 99, App., p. xliii.

(*h*) *Id.* s. 103, App., p. xliv.

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## CHAPTER XXIII.

### *Of the Court of Quarter Sessions; and of the Recorder and the Clerk of the Peace.*

If the council are desirous that a separate court of quarter sessions shall be holden for the borough, they are to signify the same by petition to the Queen in council, setting forth the grounds of the application, *the state of the gaol*, and the salary which they are willing to pay to a recorder. The Crown thereupon may grant a court of quarter sessions for the borough (a).

It would appear from the words of the Act, that it was not intended that a court of quarter sessions should be granted to any borough which had not a gaol (b); but the Court of Queen's Bench (c) will not upon a *certiorari* to bring up a rate go into the question of the validity of such a grant on the ground that there was no gaol in the borough at the time the grant was made; the proper mode of raising such an objection being by a *scire facias* to repeal the grant (d).

It seems that the grant of a court of quarter sessions will not authorize the building of a gaol in a borough in which there was not one before (e).

When a court of quarter sessions has been once granted to a borough, it appears very doubtful whether the Crown has power to rescind the grant (f).

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(a) 5 & 6 Will. 4, c. 76, s. 103, App., p. xlv. See also 5 & 6 Vict. c. 111, App., p. cix.

(b) But see 5 & 6 Will. 4, c. 76, s. 114, App., p. xlviii.; 5 & 6 Vict. c. 98, App., p. ci., and 28 & 29 Vict. c. 126, App., p. clxxvi.

(c) See note at the beginning of the volume.

(d) *R. v. Bouchier*, 3 Q. B. 641; 2 G. & D. 737.

(e) *R. v. Lancashire (Justices)*, 11 A. & E. 144; 3 P. & D. 86. See n. (b).

(f) See Rawlinson's Mun. Corp. Acts, 6th Ed. by Geary, p. 150, n. (1).



After the grant of a court of quarter sessions the borough is no longer to be assessed to the county rate (*g*). And the burgesses are exempt from serving on juries for the county sessions (*h*).

The Crown, upon the receipt of a petition as above mentioned, may appoint a recorder for the borough (*i*).

He must be a barrister of not less than five years' standing, but he must not be an alderman or councillor, or police magistrate of the borough: he is not disqualified, however, from being appointed a revising barrister. He is to hold his office *during good behaviour*. He may be appointed to act for two or more boroughs conjointly. In case of a vacancy occurring the Crown may appoint another recorder (*i*).

The recorder is to be a justice of the peace for the borough, and is to have precedence next after the mayor (*i*).

In certain cases he is to act as judge of the borough court of record (*k*).

His salary is to be paid out of the borough fund (*i*).

He is not eligible to be member of parliament for the borough, but he may be for any other place (*i*).

Before he acts, he is to take the oath required to be taken by other justices of the peace (*l*), and to make a declaration in the terms prescribed by the Act (*n*).

The borough sessions are to be held quarterly, or at such other times as the recorder may think fit. At these sessions he is to be the sole judge (*n*).

He has cognizance of all crimes, offences (*o*), and matters cognizable by the court of quarter sessions for counties (*p*), including appeals against orders of removal made by borough

(*g*) 5 & 6 Will. 4, c. 76, s. 112, App., p. xlviii.; also sec. 117, App., p. xlix., and *R. v. Birmingham (Mayor, &c.)*, 10 Q. B. 116; 12 & 13 Vict. c. 82, App., p. cxxiii.; and 15 & 16 Vict. c. 81.

(*h*) 5 & 6 Will. 4, c. 76, s. 122, App., p. lii.

(*i*) *Id.*, s. 103, App., p. xlv.

(*k*) *Id.* s. 118, App., p. l. See the next chapter. See also as to his certificate of the necessity of building or enlarging prisons, *post*, Chapter XXV.

(*l*) *Vide supra*, p. 161.

(*m*) 5 & 6 Will. 4, c. 76, s. 104, App., p. xlv.

(*n*) *Id.* s. 105 (*Ib.*)

(*o*) See 5 & 6 Vict. c. 38, as to indictable offences cognizable by the quarter sessions. See also 24 & 25 Vict. c. 96, s. 87.

(*p*) 5 & 6 Will. 4, c. 76, s. 105, *ut supra*.

justices (a), notwithstanding the language of the 6th section of the 8 & 9 Will. 3, c. 30, which provides that such appeals shall be heard at the sessions for the county, "and not elsewhere."

So the recorder may try an indictment for keeping a disorderly house (b); or an appeal against an order of borough justices directing payment of the expenses incurred by removing a pauper lunatic to an asylum (c). An appeal against an order for the maintenance of a pauper lunatic (d), must be to the sessions having jurisdiction in the place from which the pauper was removed; and if that place is a parish within the borough, the appeal must be to the borough and not to the county justices (e). So where county justices, having concurrent jurisdiction with borough justices, have made an order of removal of a pauper from a parish within a borough, the appeal lies to the borough and not to the county sessions (f). And the notice of appeal (g) will be sufficient although it erroneously state the appeal will be to the county sessions (h). But where the appellants, having given notice of appeal to the borough sessions, appeared there, when, on objection being made that the appeal lay properly to the county sessions, the appeal was dismissed; it was held that the appellant could not afterwards treat the notice as one of appeal to the county sessions (i).

The recorder is expressly empowered to hear appeals against summary convictions (k), and also appeals against borough rates (l); but as this latter power is limited to similar cases of appeal against a county rate, and as under the 55 Geo. 3, c. 51,

(a) *R. v. Salop JJ.*, 2 Q. B. 85; *R. v. Suffolk JJ.*, *Id.* 72.

(b) Under 25 Geo. 2, c. 36; *R. v. Charles*, 1 L. & C. 90.

(c) Under 9 Geo. 4, c. 40, s. 38; *R. v. St. Lawrence, Ludlow (Inhabitants)*, 11 A. & E. 170.

(d) Under 8 & 9 Vict. c. 126, s. 62, which says the appeal is to be "in like manner as if the same" (the order), "were a warrant of removal."

(e) *R. v. Lancashire*, 18 Q. B. 361; 21 L. J. M. C. 164. See 12 Q. B. 305.

(f) *R. v. Liverpool (Recorder)*, 15 Q. B. 1070.

(g) Under 11 & 12 Vict. c. 31, s. 9.

(h) *R. v. Liverpool (Recorder) ut supra*; *R. v. Bucks JJ.*, 4 E. & B. 259, n.; 24 L. J. M. C. 15, n. And see as to costs where such an erroneous notice is abandoned, *R. v. Leeds (Recorder)*, 3 E. & E. 561; 30 L. J. M. C. 86.

(i) *R. v. Salop JJ.*, 4 E. & B. 257; 24 L. J. M. C. 14.

(k) 5 & 6 Will. 4, c. 76, s. 131, App., p. lv.

(l) *Id.* s. 92, App., p. xxxviii.

s. 14, such an appeal is given only in cases of the total omission of *parishes* from the rate, or of the unequal apportionment of the rate among various parishes (*m*), it has been held that no appeal is given to individuals (*n*), although the words of the Act are, "if any person, &c., shall think himself aggrieved."

Notice of appeal is necessary, and it must be given to the town clerk (*o*). It must state that the party is aggrieved, or must show facts from which that fact may be collected (*p*), and the ground of appeal must be specified (*q*).

An appeal is also given against any district rate (*r*), and as this right of appeal is "given, as in the case of an appeal against any rate made for the relief of the poor" (*s*), it appears it is not limited as in the case of an appeal against the borough rates (*t*).

An order of quarter sessions in an appeal against a borough rate is not removeable by *certiorari* (*u*).

The recorder has the same power to do all things necessary for exercising his jurisdiction as is possessed by the court of quarter sessions for any county (*v*).

He has power also to reserve a case for the court of criminal appeal (*w*).

But he has no power to make *any* rate (*x*), or to grant licenses to publicans, or to hear an appeal against the refusal of borough

(*m*) See *R. v. Westmoreland JJ.*, 10 B. & C. 226.

(*n*) *R. v. Bath (Recorder)*, 9 A. & E. 871.

(*o*) *R. v. Carmarthen (Recorder)*, 7 A. & E. 756; 3 N. & P. 19.

(*p*) *R. v. Bond*, 6 A. & E. 905; *R. v. Blockawton*, 10 B. & C. 792.

(*q*) 15 & 16 Vict. c. 81, s. 22.

(*r*) 8 & 9 Vict. c. 110, s. 3, App., p. cxiv. See also 12 & 13 Vict. c. 65, s. 3, App., p. cxxi.

(*s*) As to appeals against a poor rate, see 43 Eliz. c. 2; 17 Geo. 3, c. 38; 6 & 7 Will. 4, c. 96, s. 6; 12 & 13 Vict. c. 45.

(*t*) *Vide supra*.

(*u*) 5 & 6 Will. 4, c. 76, s. 132, App., p. lv.; see *R. v. Ripon JJ.*, 7 A. & E. 407.

(*v*) 5 & 6 Will. 4, c. 76, s. 105, App., p. xlv. In *R. v. Hull (Recorder)*, 8 A. & E. 639, it was held that under this section the recorder had all powers relating to the inspector of weights and measures (under 5 & 6 Will. 4, c. 63, s. 17), but this power is now expressly given to the council of all boroughs whether they have a court of quarter sessions or not: 22 & 23 Vict. c. 56, s. 4, App., p. clxi.

(*w*) Under 11 & 12 Vict. c. 78, *R. v. Masters*, 1 Den. C. C. R. 332; 3 New Sess. Ca. 326.

(*x*) 6 & 7 Will. 4, c. 105, s. 8, App., p. lxxvi. See also the latter part of s. 105 of 5 & 6 Will. 4, c. 76, App., p. xlv.

justices to grant such licenses (a), or to exercise any of the powers specially vested in the council (b).

If it shall appear that the sessions are likely to last more than three days, and the mayor or two aldermen of the borough shall have certified to the recorder that the council have resolved that it will be expedient that a second court shall be formed, the recorder may appoint, under his hand and seal, a barrister of not less than five years' standing, to preside over such court, and shall transmit the name of such barrister to the Secretary of State for his approval (c).

Such barrister is to be styled "assistant barrister," and is to have the same power in his court as the recorder himself (c). He is to receive ten guineas *per diem*, but not for more than two days (d).

If the recorder shall be of opinion that the second court is no longer required, he may direct the assistant barrister to adjourn the same (c).

In case of sickness or unavoidable absence of the recorder he may appoint a barrister of not less than five years' standing to act as deputy recorder (e).

The sessions held before such deputy recorder are not to be considered invalid by reason of the cause of the recorder's absence not being deemed to be unavoidable (e).

In the event of the absence of both the recorder and the deputy recorder, the mayor is to open and adjourn the sessions, and to respite all recognizances to a future day; but he is not to do any other act as judge of the court (f).

It does not appear what is to be done in the case of the absence of the mayor at such a time, as the statute does not contain any provision for substituting an alderman in his place, as in the cases of elections (g).

The recorder may hold his court of quarter sessions during the time of the assizes for the county in which the borough is

(a) *R. v. Deane*, 2 Q. B. 96; 1 G. & D. 292; see *R. v. Bristol (Recorder)*, 4 E. & B. 265. See also 9 Geo. 4, c. 61, s. 27.

(b) 5 & 6 Will. 4, c. 76, s. 105, App., p. xlvi.

(c) 7 Will. 4 & 1 Vict. c. 19, s. 1, App., p. lxxix.

(d) *Id.* s. 2, App., p. lxxx.

(e) 6 & 7 Vict. c. 89, s. 8, App., p. cxlii.

(f) 5 & 6 Will. 4, c. 76, s. 106, App., p. xlvi.

(g) See *Id.* s. 36, App., p. xvii.

situated ; as his authority is not determined by the judges coming into the county to hold the assizes (*h*).

The clerk of the peace is to be appointed by the council, and is to hold his office during good behaviour (*i*). The recorder has the power of removing him for misconduct in his office (*k*). It has been seen that neither the clerk of the peace, nor his partner, nor any one in his employ, can act as clerk to the borough justices (*l*).

The council are to fix the fees payable to the clerk of the peace, subject to the allowance of the Secretary of State (*m*). And the town clerk is to have a table of such fees hung up in his office and in the court where the quarter sessions are held (*n*). Or, on the recommendation of the council, by an order of the Secretary of State he may be paid by salary in lieu of fees (*o*).

The clerk of the peace is to give at least ten days' notice of holding the quarter sessions, and is to summon the jurors (*p*).

And it will now be his duty, if so directed by an election Court, to prosecute any person for corrupt practices under the provisions of the "Corrupt Practices (Municipal Elections) Act, 1872" (*q*).

Whenever a second court of quarter sessions is held (*r*) the clerk of the peace is to appoint an assistant, and the recorder is to appoint an additional crier for such second court (*s*). The assistant clerk of the peace is to be entitled to two guineas *per diem*, and the additional crier to half a guinea *per diem*, but not for more than two days (*t*).

(*h*) *Smith v. Reg.* 13 Q. B. 738 ; 18 L. J. M. C. 207.

(*i*) 5 & 6 Will. 4, c. 76, s. 103, App., p. xlv.

(*k*) *R. v. Hayward*, 2 B. & S. 585 ; 31 L. J. M. C. 177.

(*l*) 5 & 6 Will. 4, c. 76, s. 102, *supra*, p. 159.

(*m*) *Id.* s. 124, App., p. lii.

(*n*) *Id.* s. 125, App., p. liii.

(*o*) 14 & 15 Vict. c. 55, s. 18.

(*p*) 5 & 6 Will. 4, c. 76, s. 121, App., p. li, and see 33 & 34 Vict. c. 77, s. 20. As to the liability of persons to be summoned a second time in one year, see 7 Will. 4 & 1 Vict. c. 78, s. 36, App., p. lxxviii.

(*q*) 35 & 36 Vict. c. 60, s. 9, App., p. cccxxi.

(*r*) *Vide supra*, p. 168.

(*s*) 7 Will. 4 & 1 Vict. c. 19, s. 1, App., p. lxxix.

(*t*) *Id.* s. 2, App., p. lxxx.

## CHAPTER XXIV.

### *Of the Borough Gaol.*

All matters connected with the borough gaol are now governed by "The Prison Act, 1865" (*a*).

If a borough has a separate prison jurisdiction (*i. e.*, if it maintains a separate prison, or would be liable at law to do so if accommodation were not provided in the prison of some other jurisdiction) (*b*), adequate accommodation for its prisoners must be provided in a prison or prisons constructed and regulated according to that Act (*c*).

The council are the authority for carrying into effect the provisions of the Act (*d*), and all expenses incurred by them in so doing are to be defrayed out of the borough rate, or other rate applicable to the maintenance of a prison (*e*).

The justices of quarter sessions (*f*) are to appoint a gaoler; a chaplain, being a clergyman of the Established Church; a duly registered surgeon (*g*); and such subordinate officers as may be necessary; and, in prisons where females are confined, a matron and subordinate female officers (*h*).

In prisons for females only, the matron is to be the gaoler (*h*).

The chaplain may officiate at two prisons within a convenient distance of each other, if together they are calculated not to receive more than 100 prisoners; but the chaplain of two

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(*a*) 28 & 29 Vict. c. 126, App., p. clxxvi.

(*b*) Sec. 9, App., p. clxxviii.

(*c*) Sec. 8, *Ib.*

(*d*) Sec. 5, sub-sec. 4, App., p. clxxvii.

(*e*) Sec. 8, *ut supra*.

(*f*) Sec. 6, sub-sec. 4, App., p. cclxxvii.

(*g*) Under 21 & 22 Vict. c. 90. See 22 Vict. c. 21; 23 & 24 Vict. cc. 7, 66; and 25 & 26 Vict. c. 91.

(*h*) 28 & 29 Vict. c. 126, s. 10, App., p. clxxviii. By some local Acts the power of appointment is vested in the council.

prisons, or of one prison in which the average number of prisoners confined at one time during the three years next before his appointment has not been less than 100, is not during his chaplaincy to hold any benefice or curacy (*i*).

The justices in sessions may also appoint an assistant chaplain of the Established Church and a deputy gaoler if requisite (*k*).

Notice of the nomination of a chaplain or assistant chaplain is, within one month after it has taken place, to be transmitted to the bishop of the diocese; and no clergyman is to officiate in the prison till he has obtained a license from the bishop, or for a longer time than while such license is in force (*l*).

Every officer of a prison (*m*) is to hold office during the pleasure of the justices of quarter sessions; and is to receive such salary as they may direct, subject to the approval of the council (*n*).

The Act contains some most important regulations as to the discipline of prisoners, but as these are set forth in unusually clear and untechnical language, it has not been thought necessary to repeat them in the body of the work (*o*).

The council has authority to alter, enlarge or rebuild any prisons or, if necessary, to build other prisons in lieu of or in addition to any subsisting prisons, and to borrow money for such purposes (*p*).

The necessity for such proceeding must be proved by the certificate of the recorder or, where there is none, by the chair-

(*i*) 28 & 29 Vict. c. 126, s. 11, App., p. clxxviii.

(*k*) Sec. 12, *Ib.*

(*l*) Sec. 13, *Ib.* The statute does not state by whom the notice is to be transmitted to the bishop; but as the appointment is to be made by the justices in sessions, the duty would probably devolve on their clerk.

(*m*) Including, it is presumed, the chaplain and surgeon. There is no definition of the word "officer" in the Act.

(*n*) 28 & 29 Vict. c. 126, s. 14, App., p. clxxix. As to the superannuation and grant of annuities to officers, see sec. 15, *Ib.*, and as to the removal of officers from their apartments, sec. 16, *Ib.*

(*o*) See secs. 17—22, App., pp. clxxix—clxxxi. See also Sched. 1 "Glen's Prisons Act" (1865)—Shaw and Sons, Fetter Lane.

(*p*) Sec. 23, App., p. clxxxi. As throughout this section the word "prisons" is in the plural number, in strictness its provisions would not apply to a borough in which there was only one prison; but this is cured by the

man of quarter sessions ; the consideration of which is not to be entertained by the council unless at least three weeks' previous notice has been given in a local newspaper of the intention to take the same into consideration at a time and place mentioned ; and the sanction of the Secretary of State must be obtained in every case (*a*).

In order to obtain such sanction the council are to forward to the Secretary of State a plan, with an estimate of the proposed expense, and the amount of money proposed to be borrowed (*b*).

In every addition, or new building, a chapel or suitable room for religious and moral instruction is to be provided, which is not to be employed for any other purpose (*b*).

The Secretary of State is to certify in writing his approval with or without modification, or his disapproval of the plans submitted to him (*c*).

Money borrowed by the council may be charged on the borough rate, or any rate applicable to the maintenance of a prison (*d*).

The council may contract with county justices in quarter sessions (*e*) having a prison in conformity with the Act, that the latter are to receive into and maintain in prison all or any particular class of prisoners maintainable by the borough ; but no such contract is to be valid unless the county prison is approved by the Secretary of State (*f*).

The council may purchase and hold any lands for the purposes of the Act ; and to facilitate such purposes certain provisions of "The Lands Clauses Consolidation Act, 1845 "

13 & 14 Vict. c. 21, s. 4, which enacts "That in all Acts words importing the singular (shall be deemed and taken) to include the plural, and the plural the singular." The section, however, clearly gives no power to build a new gaol, where there has been none before.

(*a*) 28 & 29 Vict. c. 126, s. 24, App., p. clxxxii.

(*b*) Sec. 25, *Ib*.

(*c*) Sec. 26, *Ib*.

(*d*) Sec. 27, *Ib*. See sec. 28 as to the incorporation of certain clauses of "The Commissioners' Clauses Act, 1837" (10 & 11 Vict. c. 16) relating to borrowing money, and sec. 29, as to the loan of money by the Public Works Loan Commissioners, App., pp. clxxxii., clxxxiii.

(*e*) See sec. 5, sub-secs. 1, 2.

(*f*) Sec. 31, App., p. clxxxiii. Sec. 32, App., *Ib*., relates to the expenses



(8 & 9 Vict. c. 18), and of the 23 & 24 Vict. c. 106, are consolidated with the Prison Act (*g*).

They may also sell any prison or land, which they hold in trust as prison authority, which appears to them unnecessary by reason of their having other accommodation. The money arising from the sale is to be applied in discharging any expenses in building or altering any prison or otherwise in aid of the rate for the maintenance of their prison (*h*).

The justices at quarter sessions may appoint two or more justices, with their consent, to be visiting justices (*i*), and may make rules with respect to their duties (*k*).

The visiting justices are to report at least once a quarter to the sessions (*l*).

Any justice may, under certain limitations, visit and examine the prison whenever he thinks fit, and may enter observations in the visitors' book, which is to be kept by the gaoler, who is to draw the attention of the visiting justices to such entries at their next visit (*m*).

Part II. of the Act relating to the Law of Prisons, and Part III. as to the discontinuance of certain prisons will be found in the Appendix (*n*).

of contracts between prison authorities, which if not agreed on between the parties are to be settled by arbitration under sec. 51, App., p. clxxxviii. Secs. 33 & 34, App., p. clxxxiv., relate to the appropriation of different prisons for the purposes of classification of prisoners, and of the notice of such appropriation.

(*g*) Sec. 44, App., p., clxxxvi. As to the confirmation of title to such lands see sec. 45, App., p. clxxxvii.

(*h*) Sec. 46, *Id.* As to the notice and conditions of such sale see sec. 47, App., p. clxxxviii. Secs. 49 and 50, *Id.*, relate to actions for any thing done in pursuance of the Act; and sec. 52 to App., p. clxxxix., to the recovery of penalties for offences under the Act.

(*i*) Sec. 53, *Id.*

(*k*) Sec. 54, *Id.*

(*l*) Sec. 53.

(*m*) Sec. 55, *Id.*

(*n*) Part II., secs. 56—67, App., pp. cxc, xcxi. Part III., secs. 68—71, App., p. xcii. See also 29 & 30 Vict. c. 100, App., p. cxci, and 31 & 32 Vict. c. 21, App., p. cc.

## CHAPTER XXV.

### *Of the Borough Courts of Record.*

Before the passing of the Municipal Corporation Act, courts of record for the trial of civil actions were held in certain boroughs by charter or custom, which were not regulated by any local act. In such cases, where the judge or assessor was not a barrister of five years' standing, it was enacted by that Act (a) that the recorder was to be sole judge; and by a later Act he was empowered to appoint a barrister of not less than five years' standing to be the judge thereof (b). Where there was no recorder, then the officer who had been accustomed to act as judge was to continue to do so; and the council have power to appoint the necessary officer for that purpose (c).

The judge of the court is to hold his office during good behaviour (c).

Where a court had been granted by charter to a corporation it was held that its mere disuse for two hundred years, and the fact of there being no funds for the purpose, did not constitute a valid answer to a rule for a *mandamus* commanding the court to be held (d).

The recorder, where he was the judge of a borough court was empowered, in case of sickness or unavoidable absence, to appoint under his hand and seal a barrister of not less than five years' standing as his deputy to act for him and in his stead as judge of the court then next to be held, or then being held; but not longer (e).

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(a) 5 & 6 Will. 4, c. 76, s. 118, App., p. l.

(b) 6 & 7 Will. 4, c. 105, s. 9, App., p. lxxvi.

(c) 5 & 6 Will. 4, c. 76, s. 118, *ut supra*.

(d) *R. v. Wells (Mayor, &c.)*, 4 Dowl. P. C. 562. And see *R. v. Hastings (Mayor, &c.)*, 1 D. & R. 140.

(e) 32 & 33 Vict. c. 23, s. 1, App., p. ccvi. By 7 Will 4 & 1 Vict. c. 78, s. 32, the recorder had power to appoint a barrister or attorney of five years' practice to hold the court for all purposes, *except the trial of issues in law or in fact*.

It has since been enacted that the judge of any local court may appoint a barrister of not less than *seven* years' standing as deputy or assistant judge to execute his duties ; but the appointment must be under such regulations as the Queen in council may direct (*f*).

This enactment however would not, it is submitted, abrogate the power of the recorder to appoint a barrister of *five* years' standing as his deputy, as above mentioned.

The salary of the recorder or barrister acting as judge is to be paid out of the borough fund as fixed by a bye-law of the council (*g*).

The borough courts in the boroughs mentioned in the schedules A and B of the Municipal Corporation Act are to be held at least four times in the year, and with no greater interval than four calendar months between any two successive courts (*h*).

Every borough court in which a barrister of five years' standing shall act as judge, has authority to try actions of assumpsit, covenant, debt, trespass, or trover where the sum or damages sought to be recovered do not exceed £20 ; and also actions of ejectment where the annual rent of the premises does not exceed £20, and where no fine has been reserved (*i*).

But no action is to be tried in such courts where the title to land, or to any tithe, toll, market, fair, or other franchise, shall be in question, unless the court had authority to try such question before the Municipal Corporation Act (*i*).

The jurisdiction of any such court is to extend as far as the boundaries of the borough (*i*), and upon the joint petition of the council and of the quarter sessions for the county, it may be still further extended by the Queen in council (*k*).

The judge of the court has authority to make, alter, and revoke rules for appointing the times of holding the court (*l*). for regulating the forms and manner of proceedings, the process

(*f*) 35 & 36 Vict. c. 86, s. 7, App., p. ccxli.

(*g*) 6 & 7 Will. 4, c. 105, s. 9, App., p. lxxvi.

(*h*) 2 & 3 Vict. c. 27, s. 2, App., p. xcvi.

(*i*) 5 & 6 Will. 4, c. 76, s. 118, App., p. 1; see, as to summoning juries, *Id.* s. 121, App., p. li.

(*k*) 7 Will. 4 & 1 Vict. c. 78, s. 35, App., p. lxxxvii.

(*l*) 2 & 3 Vict. c. 27, s. 1, App., p. xcv; see sec. 2, *supra*.

(except that all personal actions must be commenced by writ of summons) (*a*), the appearance, practice and pleadings in the court, and for settling the fees of attornies practising therein ; but all such rules, or orders altering or revoking rules must first be allowed by three of the judges of the superior common law courts (*b*).

By an order of the Queen in council the provisions of the Interpleader Act (*c*) may be extended to any borough court (*d*).

The council are to appoint the officers and servants necessary for carrying on the business, and executing the process of the borough court, including a registrar ; except in boroughs where the town clerk acts as registrar (*e*).

Any attorney may practise in the borough courts ; but no officer of the court can do so, nor his partner nor clerk (*e*).

The fees payable to the registrar are to be settled by the council, subject to the confirmation of the Secretary of State (*f*). The town clerk is to cause a table of the fees to be hung up in the court (*g*).

All rules and orders may be made, affidavits may be sworn, and all other matters relating merely to the business of the court may be done, in the absence of the judge, by or before the registrar, or a barrister, or attorney of five years' standing appointed by the recorder (*h*).

Although borough courts of record have never been formally abolished still their business has in many instances been most

(*a*) 2 & 3 Vict. c. 27, s. 3, App., p. xcvi.

(*b*) *Id.* s. 1, App., p. xcv ; see also 5 & 6 Will. 4, c. 76, s. 118, App., p. 1 ; 6 & 7 Will. 4, c. 105, s. 9, App., p. lxxvii., and 35 & 36 Vict. c. 86, Sched., sub-sec. 3, App., p. ccxliii.

(*c*) 1 & 2 Will. 4, c. 58.

(*d*) 35 & 36 Vict. c. 86, s. 2, App., p. ccxlii.

(*e*) 5 & 6 Will. 4, c. 76, s. 119, App., p. li.

(*f*) *Id.* s. 124, App., p. lii. By 35 & 36 Vict. c. 86, Sched., sub-sec. 3, *ut supra*, the "judge" of a local court of record is required to settle the table of these fees subject to the approval of two judges of the superior courts ; but this does not interfere with the power of the council to settle the fees in borough courts of record held by charter or ancient usage.

(*g*) 5 & 6 Will. 4, c. 76, s. 125, App., p. liii. In other local courts this is to be done by the registrar. 35 & 36 Vict. c. 86, Sched., sub-sec. 5, App., p. ccxliv.

(*h*) 7 Will. 4 & 1 Vict. c. 78, s. 33, App., p. lxxxvii. ; see further 35 & 36 Vict. c. 86, App., p. ccxli.

extensively diminished since the establishment of county courts, and this is now likely to be still more the case since an enactment in 1867 (*i*), that where any action is brought in any other court than the superior courts, which could have been brought in a county court and the verdict is for less than £10 the plaintiff shall not recover more costs than he would have been allowed if the action had been brought in the county court; unless the judge certify that the action was a fit one to be brought in his court (*k*).

Where by the terms of a charter a particular action, such as one, the cause of which arises within the borough, or one between two burgesses, must be tried in the borough court, this enactment would not apply; as such an action would not be one which could have been brought in a county court.

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(*i*) 30 & 31 Vict. c. 142. *An Act to amend the Acts relating to the jurisdiction of the county courts.*

(*k*) *Id.* s. 29, App., p. cxcviii.

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## CHAPTER XXVI.

### *Of Free Public Libraries and Museums.*

In any borough, of whatever amount of population (*a*), the mayor, either on the request of the council, or of ten ratepayers residing in the borough, which last request must be in writing (*b*), is to convene a public meeting of the burgesses to determine whether "The Public Libraries Act, 1855" (*c*) shall be adopted for the borough (*d*).

Notice of the time, place, and object of the meeting is to be given by affixing the same on the door of every church and chapel in the borough ten days at least before the meeting, and also by advertising the same in a newspaper published or circulated within the borough, seven days at least previously (*e*).

If two-thirds of the meeting determine that the Act ought to be adopted it is thenceforth to take effect and come into operation (*e*).

A minute of the resolutions of the meeting is to be made, which is to be signed by the mayor or chairman of the meeting. And these resolutions so signed are to be conclusive evidence that the meeting was duly convened, and the vote duly taken, and that the minute contains a true account of the proceedings (*d*).

The expenses of the meeting, whether the Act shall be adopted or not, and the expenses of carrying the Act into

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(*a*) 29 & 30 Vict. c. 114, s. 6, App., p. cxvii.

(*b*) *Id.* s. 3, App., p. cxvi.

(*c*) 18 & 19 Vict. c. 70, App., p. cxl.

(*d*) *Id.* s. 4, App., p. cxli.

(*e*) *Id.* It has been attempted to express the intention of this part of the section rather than its exact provisions, which are sufficiently strange: "ten days' notice at least of the time, &c., shall be given by affixing, &c., and also by advertising, &c., seven days at least before the day appointed for the meeting." So that, in strictness, either ten days' notice is to be given in seven days, which is absurd; or the "seven days at least" must be extended to ten days; and then there would be no reason for the distinction.

execution may be paid out of the borough rate, or a rate in the nature of a borough rate (*f*).

The amount to be paid in any one year is not to exceed one penny in the pound on the annual value of the property in the borough rateable to a borough rate (*g*).

If the meeting determine against the adoption of the Act no meeting for a similar purpose is to be held for the space of one year at least afterwards (*h*).

But if a public museum has been, or shall be, established under any Act, a public library may be established in connection therewith without any further proceedings; and in like manner a museum may be established in connection with a library previously established (*i*).

Distinct accounts are to be kept of the receipts, payments, and liabilities of the council with reference to the execution of the Act (*k*).

The council may, with the approval of the Treasury, from time to time, borrow at interest, on the security of a mortgage or bond of the borough fund, such sums as may be required; and the commissioners under 9 & 10 Vict. c. 80 (*l*), may advance any such sums (*m*).

The council may, with the approval of the Treasury, appropriate for the purposes of the Act lands vested in the corporation; and purchase or rent any lands or suitable buildings (*n*).

(*f*) By the 18 & 19 Vict. c. 70, s. 5, the expenses might be paid out of the borough fund and the council were empowered to levy a library rate for the purpose; but these provisions are repealed and those above substituted by 29 & 30 Vict. c. 114, s. 2, App., p. cxevi.

(*g*) 29 & 30 Vict. c. 114, s. 2, *ut supra*; see also 18 & 19 Vict. c. 70, s. 15, App., p. cxli, and *Exp. Brown*, 31 L. J. M. C. 108.

(*h*) 18 & 19 Vict. c. 70, s. 23, App., p. cxliii. As to parishes adjoining a borough uniting in adopting the Public Libraries Act, 1855, see 29 & 30 Vict. c. 114, s. 4, App., p. cxevi.

(*i*) *Id.* s. 10, App., p. cxvii.

(*k*) 18 & 19 Vict. c. 70, s. 5, App., p. cxli.

(*l*) "An Act to authorize the advance of money out of the consolidated fund, for carrying on public works," &c.

(*m*) 18 & 19 Vict. c. 70, s. 16, App., p. cxli. By sec. 17, App., p. cxlii, the provisions of "The Companies Clauses Consolidation Act, 1845" (8 & 9 Vict. c. 16), as to borrowing, are extended to this Act.

(*n*) 18 & 19 Vict. c. 70, s. 18, App., p. cxlii.

On such lands they may erect buildings, suitable for public libraries, or museums, or schools for science or art; and may alter, extend, and fit up the same (*a*).

The general management of such libraries, museums, and schools is vested in the council; who have general powers to incur necessary expenses, to make necessary purchases, to appoint and dismiss salaried officers and servants, and to make rules and regulations for the safety and use of the libraries, &c., and for the admission of the public (*b*).

But all libraries and museums established under the Act are to be open to the public free (*c*).

The lands and buildings and all property real or personal presented to, or purchased for, any library or museum established under the Act, or for school for science or art, is vested in the corporation (*d*).

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(*a*) 18 & 19 Vict. c. 70, s. 18 (App., p. cxlii). Sec. 19, *Id.*, incorporates the provisions of "The Lands Clauses Consolidation Act, 1845" (8 & 9 Vict. c. 18), except that the council are not to take lands otherwise than by agreement; and sec. 20, *Id.*, authorizes the council, with the approval of the Treasury, to sell or exchange any lands for the purposes of the Act.

(*b*) 18 & 19 Vict. c. 70, s. 21, *Id.*

(*c*) *Id.* s. 25, App., p. cxliii.

(*d*) *Id.* s. 22, App., p. cxlii. See 17 & 18 Vict. c. 112, as to institutions for the promotion of literature and the fine arts; 26 Vict. c. 13, App., p. clxxi., as to the protection of gardens or ornamental grounds in cities and boroughs; 9 & 10 Vict. c. 74, as to the establishment of baths and wash-houses; 16 & 17 Vict. c. 97; 18 & 19 Vict. c. 105; and 25 & 26 Vict. c. 111, as to lunatic asylums.

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## CHAPTER XXVII.

### *Of the Borough Fund, Borough Rate, and Watch Rate.*

It has been seen that all corporate property and all fines received are to be carried to the account of a general fund, called "The Borough Fund" (*e*).

Out of this fund the council are empowered to pay all lawful debts contracted *bonâ fide* before the passing of the Municipal Corporation Act (*e*). They have also the power of paying money that may have been subsequently borrowed for the purpose of making such payments (*f*).

Where, before the passing of that Act, a bond had been given by a corporation to one of its aldermen, to reimburse him for the costs which he had incurred in defending, though unsuccessfully, several *quo warranto* informations filed against himself and several other members of the corporation; it was held that, in the absence of all fraud, this was a lawful debt within the meaning of the Act, although the *quo warranto* had been defended without the authority of the old corporation (*g*).

To an action of debt against a corporation, alleging that the plaintiff, as one of the twelve senior burgesses under a certain bye-law, was entitled to a share of the rents of certain lands which had been received by the defendants, they pleaded that they necessarily, and as they were legally required and bound to do, paid and applied all the rents of the said lands, together with and among other rents and sums of money in payment of certain lawful debts then due and owing to divers persons from

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(*e*) 5 & 6 Will. 4, c. 76, s. 92, App., p. xxxviii. See also s. 48, App., p. xx; s. 121, App., p. li; s. 126, App., p. liii.

(*f*) 7 Will. 4 & 1 Vict. c. 78, s. 28, App., p. lxxxvi. See *Attorney-General v. Lichfield (Corp.)*, 13 Sim. 847; *R. v. Lichfield (Town Council)*, 4 Q. B. 893.

(*g*) *Holdsworth v. Dartmouth (Mayor, &c.)*, 11 A. & E. 490. And see *Doe d. Parr v. Roe*, 1 Q. B. 700; *Hopkins v. Swansea (Mayor, &c.)*, 4 M. & W. 521; S. C. in error, 8 M. & W. 901.

the defendants in their corporate capacity, out of the property of the borough, and by law then payable in priority and preference to the payments to the twelve senior burgesses.

It was held that this plea was bad, as it did not state that the debts were contracted before the passing of the Municipal Corporation Act, so as to entitle the defendants, under the 92nd section, to pay the creditors of the borough to the prejudice of the plaintiff's claim.

Also, that as the corporation could not, under that Act, pay their creditors voluntarily, to the prejudice of the plaintiff's rights, the plea ought to have stated either that they were compelled by their creditors to pay their debts, or that the sums paid to creditors were an annual charge upon the lands from which the annual payments to the burgesses issued.

*Semble*, that the plea ought to have stated that there was no surplus annual income remaining after payment of the interest due to creditors, of the salaries of municipal officers, and of other lawful expenses (*a*).

It had been held that under the operation of this section corporate property was not rateable to the relief of the poor (*b*); but by 4 & 5 Vict. c. 48. (*c*), the corporations mentioned in the schedules (A) and (B) to the Municipal Corporation Act (*d*) are made rateable, as beneficial occupiers, in respect of corporate property; but such property is exempt from rateability where it lies wholly within a borough.

The council are not authorized to expend the *principal* of any monies belonging to the corporation in the payment of debts. Therefore where money had been paid into court as the produce of corporation—land sold to the government, such money could not be applied in discharge of corporation debts (*e*).

(*a*) *Hopkins v. Swansea (Mayor, &c.)*, 4 M. & W. 521; S. C. in error, 8 M. & W. 901.

(*b*) *R. v. Liverpool (Mayor, &c.)*, 9 A. & E. 435; 1 P. & D. 334; *R. v. Exminster (Inhabitants)*, 12 A. & E. 2; 4 P. & D. 69.

(*c*) *Post*, App., p. ci.

(*d*) *Post*, App., pp. lxx., lxxix.

(*e*) *Exp. Hythe (Corp.)*, 4 Y. & Coll. 55. See also *Attorney-General v. Liverpool (Corp.)*, 1 Myl. & Cr. 199.

The Court of Queen's Bench has refused to grant a *mandamus* commanding a party to pay money to the treasurer of a borough under this section, unless the application be made, either by the treasurer, or after he has been required to demand the payment; even though the applicant for the *mandamus* be ultimately entitled to the money (*f*).

By the 6 & 7 Will. 4, c. 104, s. 1 (*g*), the council may execute from time to time any deed or obligation in the name of the corporation for securing repayment and satisfaction of any debt or obligation contracted by or on behalf of the corporation before the passing of the Municipal Corporation Act.

It had been doubted whether, under the 92nd section of the Municipal Corporation Act, corporate property is exempt from execution (*h*); but it has been held that a creditor of a corporation could not have execution, in respect of a debt which had accrued before the passing of the Act, against corporate property acquired since that time (*i*).

Subject to the payment of such debts out of the borough fund, there are to be paid, in cases where such payments are applicable, the salaries of the mayor, the recorder, the police magistrates, the town clerk, the treasurer, and every other officer whom the council may appoint; the expenses connected with the borough elections, such as the printing of burgess-lists, ward-lists, notices, and the like (*k*), including all expenses where the election is by ballot (*l*); the expenses of prosecuting and maintaining offenders (*m*); the expense of maintaining the borough gaol, the house of correction, corporate buildings and other such matters (*n*); the payment of constables, and of all other expenses

(*f*) *R. v. Frost*, 8 A. & E. 822; and see *R. v. Pepper*, 7 A. & E. 747.

(*g*) App., p. lxxii.

(*h*) *Doe d. Parr v. Roe*, 1 Q. B. 700.

(*i*) *Arnold v. Ridge*, 13 C. B. 745. See, however, *Arnold v. Gravesend (Mayor, &c.)*, 2 Kay & J. 574. See further *Attorney-General v. Black*, Q. B. 6 Exch. 78; 308.

(*k*) See *R. v. Cambridge (Mayor, &c.)*, 4 Q. B. 801.

(*l*) 35 & 36 Vict. c. 33, s. 20, sub-sect. 4, App., p. ccxiv.

(*m*) As to the expenses of trials of offenders sent by a borough for trial at the assizes, see 5 & 6 Will. 4, c. 76, s. 114, App., p. xlviii; 5 & 6 Vict. c. 98, s. 18, App., p. civ; *R. v. Johnson*, 10 A. & E. 740.

(*n*) See the last chapter as to the establishment of libraries and museums, and the purchase of land for that purpose: see also *supra* p. 180, n. (*d*).

not therein otherwise provided for, which shall be necessarily incurred in carrying into effect the provisions of the Act (a).

If there is any surplus, it is to be applied under the direction of the council for the public benefit of the inhabitants and the improvement of the borough (a).

Under this Act it was held that, where there was no surplus fund, the expenses of opposing a bill in parliament for the regulation of a waterworks company could not be paid out of the borough fund, even though such opposition was manifestly meritorious and for the benefit of the borough (b).

But it has recently been enacted, that where in the judgment of the council (c), it is expedient to promote or oppose any local and personal bill in parliament, or to prosecute or defend any legal proceedings necessary for the promotion or protection of the interests of the inhabitants of the borough (d), the council may apply the borough fund, or borough rate (e), or other public funds or rates under their control to the payment of the costs and expenses attending the same; and when there are several funds or rates under their control they shall determine out of which of them such expense shall be payable, and in what proportions (f).

This is not, however, to authorize the promotion of any bill for the establishment of any gas or waterworks to compete with any existing gas or water company established under any Act (f).

And the powers contained in the clause are not to apply in any case where the promotion of, or opposition to, a bill by a council has been decided by a committee of either House to be unreasonable or vexatious (f).

No payment to any member of the council for acting as

(a) 5 & 6 Will. 4, c. 76, s. 92, App., p. xxxviii.

(b) *R. v. Sheffield (Mayor)*, L. R. 6 Q. B. 652.

(c) See s. 1, definition of the term "governing body."

(d) See *Id.*, definition, of the term "district."

(e) *Vide infra*.

(f) Sec. 2, App., p. ccxvi.

counsel or agent in promoting or opposing any such bill shall be so charged (*h*).

With reference, however, to bills in parliament no expense is to be incurred unless previously sanctioned by a resolution of an absolute majority of the whole number of the council at a meeting after ten clear days' notice by public advertisement of the same, and of the purpose thereof in some local newspaper ; such notice to be in addition to the ordinary notices required for summoning such meeting (*i*).

It is further requisite that the *resolution* should be published twice in some local newspaper, and shall also have received the approval of the local government board in matters within their jurisdiction, and in other matters of a Secretary of State (*k*).

In case of the promotion of a bill no further expense is to be incurred after the deposit of the bill, unless the propriety of such promotion is confirmed by the same absolute majority, at a further special meeting held in pursuance of a similar notice not less than fourteen days after the deposit of the bill (*l*).

As a still further precaution against unnecessary expenditure of the borough funds, the promotion or opposition of a bill must have been consented to by the owners and ratepayers (*i. e.*, the burgesses), of the borough, such consent to be expressed by resolution in the manner provided in the Local Government Act (1858), (*m*), *i. e.*, by voting papers (*n*).

(*h*) 35 & 36 Vict. c. 91, s. 3, App., p. cclxvi.

(*i*) Sec. 4, *Ib.* The meaning of these latter words is not very clear. As "such meeting" is to be called only by virtue of this section ; and as the section points out a particular notice to be given ; and as no reference is made to any other Act, it is not quite clear what "ordinary notices" are "required for summoning such meeting." But it is presumed that the notices are intended that are required for extraordinary meetings of the council, under sec. 69 of 5 & 6 Will. 4, c. 76, App., p. xxix.

(*k*) 35 & 36 Vict. c. 91, s. 4, App., p. cclxvi.

(*l*) *Ib.*, App., p. cclxvi. As only *one* notice is here spoken of, it will be the ten days' notice previously spoken of in this section.

(*m*) 21 & 22 Vict. c. 98, ss. 12, 13.

(*n*) 35 & 36 Vict. c. 91, s. 4, *ut supra*. See further, sec. 5, App., p. cclxvii., as to the approval of the local government board, or of the

Various questions have been raised from time to time as to what expenses may be legitimately made out of the surplus fund under the provisions of the 92nd section of the 5 & 6 Will. 4, c. 76, which, as has been seen, provides that such fund shall be applied "for the public benefit of the inhabitants and improvement of the borough."

It may perhaps be considered settled that these words will cover an expenditure of the fund by the council in the *bonâ fide* defence of their corporate rights (*a*); and this even though the corporation should eventually prove unsuccessful (*b*).

So where a corporation opposed a bill in parliament for the construction of waterworks, and the doing of other acts, which if done would interfere with the course of a river flowing through the borough, so as to prevent the efficient action of the stream in removing the sewage, and thus indirectly to affect the value of rateable houses in the borough, the tolls of the market, and the other property forming the borough fund; it seems to have been held that the surplus might be applied to the payment of expenses incurred in such opposition. (*c*).

An injunction has been granted to restrain a corporation from defraying the expenses of a bill before parliament for improvements in the borough, where it was alleged there was no surplus of the borough fund (*d*).

It seems also that the expenses of a prosecution for a riot and assault on the mayor whilst engaged in the revision of the burgess list may be paid out of the surplus, provided the prosecution has been instituted by the authority of the council; but not otherwise (*e*).

Secretary of State to any such resolution; and of the right of any ratepayer to give notice to the Secretary of State objecting to such approval; sec. 6, *Ib.*, as to the examination of costs; and sec. 7, *Ib.*, as to the power of the Secretary of State to direct a local inquiry to be held upon any application under the Act.

(*a*) See by the Lord Chancellor in *Attorney-General v. Norwich (Mayor, &c.)*, 2 Myl. & Cr. 406; S. C. below, 1 Keen, 700.

(*b*) *R. v. Tamworth (Mayor)*, 19 L. T. (N. S.) 433.

(*c*) *Attorney-General v. Wigan (Mayor, &c.)* 1 Kay, 268; see *Attorney-General v. Andrews*, 2 Hall & Twells, 431; 2 Mar. N. & Good. 225; *Bright v. North*, 2 Phill. 216.

(*d*) *Attorney-General v. Norwich (Mayor, &c.)*, 12 Jur. 424.

(*e*) *R. v. Lichfield (Town Council)*, 4 Q. B. 893; D. & M. 491.

Where a council had dismissed an officer for alleged misconduct, and refused him compensation, and he obtained a *mandamus* commanding them to assess such compensation, the council having *bonâ fide* (though as it turned out without foundation), resisted the *mandamus* on the ground of the supposed misconduct, it was held that the costs might be charged on the fund (*f*).

So as to the costs of showing cause against rules for writs of *mandamus* to the mayor and assessor directing them to hold fresh courts of revision in order to place on the list the names of persons who had been omitted on the revision; there being nothing to show that the litigation was not justifiable on the part of the corporation (*g*).

On the other hand, the costs of opposing a rule for a *quo warranto* information against a person duly elected a councillor cannot be paid out of the fund (*h*). Nor those of opposing a rule for a criminal information against an alderman for alleged misconduct (*i*); nor the costs of resisting a *mandamus* directed to the corporation for the purpose of trying which of two councillors was legally elected (*k*); as in such cases the expenses are not incurred for public purposes.

On a similar principle the expenses of an inspector of police in prosecuting the publisher of a libel on him cannot be paid out of the borough fund (*l*); nor the costs incurred by borough constables in defending themselves against indictments preferred against them, though it seems these might have been defrayed by the watch-committee with the sanction of the council (*m*).

So costs incurred with the sanction of the council in a Chan-

(*f*) *R. v. Lichfield (Town Council)*, 10 Q. B. 534.

(*g*) *Lewis v. Rochester (Mayor, &c.)*, 9 C. B. (N. S.) 401; 30 L. J. C. P. 169.

(*h*) *R. v. Bridgewater*, 10 A. & E. 281.

(*i*) *R. v. Paramore, Id.* 286.

(*k*) *R. v. Leeds (Mayor, &c.)*, 4 Q. B. 790.

(*l*) *R. v. Liverpool (Mayor, &c.)*, 41 L. J. Q. B. 175.

(*m*) Under sec. 82 of 5 & 6 Will. 4, c. 76, App., p. xxxiv; *R. v. Thompson*, 5 Q. B. 477; Dav. & M. 497.

cery petition with respect to the appointment of charity trustees (a), cannot be paid out of the borough fund (b).

And clearly the corporation cannot pay any unnecessary expense, such as the purchase of a gold chain for the mayor, out of the fund (c).

A salaried officer of the corporation must look to the borough fund for the payment of his salary, and cannot maintain an action *against the corporation* for arrears (d).

Under the Municipal Corporation Act an order of the town council for the payment of money out of the borough fund would not have been removeable by *certiorari* (e), but as it has been considered expedient to give all persons interested in such fund a direct and easy remedy for the misapplication thereof, it has been enacted, that such orders may be so removed into the Court of Queen's Bench (f), where they may be disallowed or confirmed (g).

This enactment is retrospective in its effect (h); and it will apply though the order was irregular in point of form (i).

It seems the costs of opposing a *certiorari* are not payable out of the borough fund (k).

In case the borough fund is not sufficient to meet the sums charged upon it, the council may order a borough rate to be made in the nature of a county rate (l).

Such a rate must not be retrospective (m); yet, as the council

(a) Under sec. 71 of 5 & 6 Will. 4, c. 76, App., p. xxx.

(b) *R. v. Warwick (Mayor, &c.)*, 8 Q. B. 930; 15 L. J. Q. B. 306.

(c) *Attorney-General v. Batley (Mayor)*, 26 L. T. (N. S.) 392.

(d) *Addison v. Preston (Mayor, &c.)*, 12 C. B. 108. See also *Jones v. Carmarthen (Mayor, &c.)*, 8 M. & W. 605; *Exp. Hythe (Corp., &c.)*, 4 Y. & Coll. 55.

(e) See 5 & 6 Will. 4, c. 76, s. 132, App., p. lv.

(f) See note at the beginning of the volume.

(g) 7 Will. 4 & 1 Vict. c. 78, s. 44, App., p. lxxxix.

(h) *R. v. Bridgewater (Mayor, &c.)*, 10 A. & E. 281; *R. v. Paramore*, *Id.* 288; *R. v. Liverpool (Mayor)*, 41 L. J.; Q. B. 175.

(i) *R. v. Lichfield (Town Council)*, 4 Q. B. 893.

(k) *R. v. Greene*, 4 Q. B. 646; *R. v. Duncan*, 5 Q. B. 959. *Vide infra*, as to the borough fund. See further as to the payment of costs, *R. v. Dunn*, 5 Q. B. 959.

(l) 5 & 6 Will. 4, c. 76, s. 92, App., p. xxxviii.

(m) *Woods v. Reed*, 2 M. & W. 777. The 7 Will. 4 & 1 Vict. c. 81, s. 2, which permitted retrospective rates to be made, was confined to rates



can only be called on to act according to the exigency of the case, and to make an estimate as nearly sufficient as may be, it may happen that the rate may fall short, and in such a case bygone expenses may be included in the rate (*n*).

Where a corporation had been involved for some years in litigation with the ex-town clerk, and the council, in obedience to a *mandamus*, had awarded and paid compensation to him, and their present officer had paid certain costs due to him to prevent an execution on the corporate property, it was held that such payments were properly included in one rate, which was not bad as being retrospective (*n*).

The council have the same powers in respect to making the borough rate, as justices in sessions have (*o*) to make a county rate (*p*). But though the justices in sessions must make the county rate in open court (*q*), yet the council need not do so, as they are not a court, and do not ordinarily transact business in public (*n*).

The rate is to be assessed upon every parish or township in the borough, according to a certain pound rate, to be fixed from time to time by the council, of the full and fair annual value of the messuages, lands, tenements, and hereditaments rateable to the relief of the poor therein (*r*).

The churchwardens or overseers, if ordered by the council (*s*), are to pay the rate out of the poor rate; or, if so ordered by the council, they are to make a separate rate for that purpose (*t*).

If they refuse to comply with any such order, the amount of

made for the purpose of defraying expenses incurred before the passing of that Act: and this section is now repealed by the Statute Law Revision Act, 1874 (37 & 38 Vict. c. 35). See *Attorney-General v. Lichfield (Corp.)*, 11 Beav. 120; 17 L. J. (N. S.) Chanc. 462; *Fernley v. Worthington*, 1 M. & G. 491.

(*n*) *Jones v. Johnson*, 5 Exch. 862.

(*o*) Under 55 Geo. 3, c. 51. See also 4 & 5 Will. 4, c. 48; 7 & 8 Vict. c. 33; and 15 & 16 Vict. c. 81.

(*p*) 5 & 6 Will. 4, c. 76, s. 92, App., p. xxxviii.

(*q*) See 4 & 5 Will. 4, c. 48.

(*r*) 55 Geo. 3, c. 51, s. 1.

(*s*) See *Jones v. Johnson*, *ut supra*.

(*t*) 7 Will. 4 & 1 Vict. c. 81, s. 1, App., p. xcii. This statute was passed to supply an omission in the Municipal Corporation Act to extend some of the provisions in the 55 Geo. 3, c. 51, to borough rates.

the rate may be levied on their goods, or the goods of any of them, by a distress warrant under the hand and seal (a) of the mayor, or of any two borough justices (b).

As this is the remedy given by the statute, it seems the Court will not issue a *mandamus* commanding the overseers to levy a rate (c).

If any person liable to pay the borough rate shall neglect to do so, the amount may be levied on his goods in like manner (b).

In those parishes, townships, or extra-parochial places which lie partly within and partly without the borough, the overseers appointed by the council (d) are empowered to levy a district rate in the same manner as the general rate is levied for a whole parish (e).

A *district rate* is to be allowed by two borough justices, and to be published in the same manner as a poor rate (f).

In divided parishes or places, where parts are comprised in boroughs not subject to contribute to the county rate, or county or district police rate, while the parts out of the borough are liable to contribute thereto (g); or where parts are comprised in boroughs which are subject to district, borough and other rates, while the parts out of the borough are not liable to contribute thereto, the overseers, on receipt of a warrant from the mayor,

(a) Query, the seal of the borough? See 5 & 6 Will. 4, c. 76, s. 92, and *Jones v. Johnson*, 5 Exch. 862.

(b) 7 Will. 4 & 1 Vict. c. 81, s. 1, App., p. xcii.

(c) *R. v. Hunslet (Overseers)*, 1 E. & E. 775.

(d) The words of the Act (8 & 9 Vict. c. 110) are "in every case in which any parish, &c., shall lie partly within and partly without any such borough, and the council of such borough hath appointed, or hereafter shall appoint, one or more persons to act as overseer or overseers within that part of such parish, &c."

By the 7 Will. 4 & 1 Vict. c. 81, s. 3, it was enacted, that in parishes, &c., so situated, "the council of the borough shall appoint one or more proper person or persons to act as overseer or overseers within that part of such parish, &c."

But this section is repealed by 12 & 13 Vict. c. 65, s. 6; and s. 2 of this latter Act (App., p. cxvii), which provides for the collection of the borough rate in parishes so situated, speaks of "the overseers or other persons charged with the collection of the rates," without specifying by whom they are to be appointed.

(e) 8 & 9 Vict. c. 110, s. 1, App., p. cxiii.

(f) *Id.* s. 2, App., p. cxiv.

(g) 12 & 13 Vict. c. 65, s. 1, App., p. cxx.

or a borough justice, or other officer having proper authority, are to assess on and levy from the inhabitants and occupiers of all messuages, &c., liable to the poor rates in that part of their parish which is within the borough the amount mentioned in the warrant, either as a separate rate or as part of the poor rate; and shall pay the amount to the person authorized to receive the same (*h*).

The council, or a committee appointed for that purpose, may, upon application, excuse persons from the payment of any district rate on account of poverty (*i*).

District rates may be levied by distress in the same manner as a borough rate (*k*).

An overseer has no power to make a rate for a larger sum in the pound than is specified in the order of the council; even though the amount for which it is actually made was necessary in order to raise the sum required by the order, after allowance for empty houses and insolvent occupants (*l*).

Where the council made an order for the making of a borough rate on the several parishes, &c., within the borough; that the proportion thereby assessed on that part of the parish of S. which lay within the limits of the borough should be £365; that the churchwardens, &c., should levy, collect, and pay the amounts assessed on their respective parishes, &c.; and that a warrant under the corporate seal should be directed to the town clerk, authorizing him to demand, collect, and receive the amounts so rated, and for that purpose to issue his warrants to the churchwardens, &c., requiring them to levy, collect, and pay the same amounts, &c.; and a warrant was accordingly issued to the town clerk, directing him to demand, collect, and receive the amounts rated, and he issued his precept to the special overseer who had been previously appointed (*m*), for that part of the parish of S. which lay within the limits of the borough, requiring him to *levy, collect, and*

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(*h*) 12 & 13 Vict. c. 65, s. 2, App., p. cxxi. See *Id.* s. 1, as to the rate for the parts of a parish without the borough; and sec. 3 as to appeal against the rate and audit of the accounts.

(*i*) 8 & 9 Vict. c. 110, s. 5, App., p. cxv.

(*k*) *Id.* s. 7, App., p. cxvi.

(*l*) *R. v. New Windsor (Mayor, &c.)*, 7 Q. B. 908.

(*m*) Under s. 3 of 7 Will. 4 & 1 Vict. c. 81, now repealed.

pay, by a fair and equal rate, the sum of £365, &c. ; it was held that the order of the council authorized the overseer under their precept to *make* a rate for that purpose (*a*).

An appeal, it has been seen, is given to the borough sessions, that is, to the recorder, against the borough rate (*b*), and also against a district rate (*c*).

In boroughs where, previous to the Municipal Corporation Act, a rate was levied either solely for the purpose of watching, or for that purpose conjointly with some other (*d*), the council are empowered to levy a separate watch rate, either for the whole or parts of the borough (*e*), not exceeding eight pence in the pound (*f*).

The same powers are given with respect to raising the watch rate in parishes partly within and partly without the borough, as in the case of the borough rates (*g*) ; but the overseers of a parish so situated are not to pay the watch rate out of the poor rate, but are to make a separate rate for the purpose upon such parts of the parish as are liable thereto (*h*).

The watch rate must be allowed and published (*i*), and may be appealed against (*k*) in the same manner as a district rate ; and the council in like manner may excuse persons from the payment on account of poverty (*l*).

It may also be levied by distress in the same manner as the borough rate, or district rate (*m*).

It has already been seen that where the borough fund is not sufficient for the purpose, a separate rate in the nature of a borough rate may be made for establishing and maintaining a public library or museum within the borough (*n*).

(*a*) *Cobb v. Allen*, 16 L. J. (N. S.) Q. B. 397.

(*b*) 5 & 6 Will. 4, c. 76, s. 92, App., p. xxxviii. As to the incidents of this appeal, see Chap. XXIII, *supra*, p. 166.

(*c*) 8 & 9 Vict. c. 110, s. 5.

(*d*) See *Id.* ss. 84, 85, App., pp. xxxv, xxxvi.

(*e*) *Id.* s. 92, *ut supra*.

(*f*) 22 & 23 Vict. c. 32, s. 5, App., p. clvi. The rate was limited to sixpence in the pound by 2 & 3 Vict. c. 28, s. 1 ; and 3 & 4 Vict. c. 28, s. 2 ; but this limitation is repealed by 22 & 23 Vict. c. 32, s. 5.

(*g*) 8 & 9 Vict. c. 110, s. 1, App., p. cxiii.

(*h*) *Id.* s. 6, App., p. cxv.

(*l*) *Id.* s. 5, App., p. cxv.

(*i*) *Id.* s. 2, App., p. cxiv.

(*m*) *Id.* s. 7, App., p. cxvi.

(*k*) *Id.* s. 3, *Id.*

(*n*) *Supra*, Chap. XXVI., p. 180.

## CHAPTER XXVIII.

### *Of Proceedings by Mandamus.*

It remains to consider briefly the proceedings by *mandamus* and *quo warranto*, in regard to municipal corporations.

It is an incident to all corporations that they are liable to be *visited*; that is, that any irregularities which may arise in them from time to time may be inquired into and arrested by some competent authority.

In ecclesiastical corporations, for example, the ordinary is, by the canon law, the visitor. In eleemosynary lay corporations the founder, his heirs or assigns, are, at common law, the visitors. But in civil lay corporations, including municipal corporations, as their existence is derivable from the Crown, the power of visitation is vested therein (o).

This power of visitation in the Crown, in regard to municipal corporations, was exercised by the Court of Queen's Bench and will henceforward be so by the Queen's Bench Division of the Supreme Court of Justice, according to the rules of the common law (p); and it is chiefly exercised by means of the writ of *mandamus*, or of an information in the nature of a *quo warranto*.

A *mandamus* is a high prerogative writ, and is, in form, a command issuing in the Queen's name, directed to any person, or corporation, or inferior court of judicature, within the Crown's dominions, requiring them to do some particular thing therein specified, which appertains to their office and

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(o) See 3 Bl. Com. 480.

(p) See *Philips v. Bury*, Ld. Raym. 8, by *Holt*, C. J.; Bac. Abr. tit. *Corporations* (F).

duty, and which the Court has previously determined, or at least supposes, to be consonant to right and justice (*a*).

In its application, it may be considered as generally confined to cases where relief is required in respect of the infringement of some *public* right or duty, and where no effectual relief can be obtained in the ordinary course of an action at law (*b*).

It would exceed the limits of this work to attempt to mention in detail all the cases in which it has been decided that a *mandamus* may be issued to a corporation. It may be sufficient to mention a few leading examples.

A *mandamus* will lie to compel a corporation to proceed to the election of corporate officers (*c*); or the admission of a freeman (*d*); or to restore any officer, such as recorder (*e*), town-clerk (*f*), or clerk of the peace (*g*), or any member of the corporation who has been turned out, or disfranchised, or suspended (*h*).

It will lie also, by statute (*i*), as has been before stated, to insert the name of a person in the burgess-list, whose claim has been rejected, or whose name has been expunged from the list. A party who applies for a *mandamus* under this statute must come prepared to prove his title in all respects; and the Court will inquire into the goodness of the whole title (and not merely into the points raised before the mayor on the revision) (*k*). It will not be sufficient for him to show that his name was improperly expunged by the mayor on a point as to which he had no jurisdiction (*l*).

Where the overseers of one of the parishes in a borough had

(*a*) 3 Bl. Com. 110.

(*b*) *Ib.* And see the cases there cited.

(*c*) See 11 Geo. 1, c. 4, App., Part II., p. cclxvi; *R. v. London (Mayor)*, 1 T. R. 146; *R. v. Leyland*, 3 M. & S. 184; *R. v. Norwich*, 1 B. & Ad. 310.

(*d*) *Bagg's Case*, 11 Rep. 94; Bac. Abr. tit. *Mandamus*, (C. 1) & (D).

(*e*) Style, 452; Vent. 143, 153; 4 Burr. 1999.

(*f*) Noy, 78; Style, 457.

(*g*) 4 Mod. 31; Show. 282; 12 Mod. 13.

(*h*) Bac. Abr. *ut supra*; and (C. 3).

(*i*) 7 Will. 4 & 1 Vict. c. 78, s. 24, App., p. lxxxv.

(*k*) *R. v. Lichfield (Mayor, &c.)*, 2 Q. B. 693; 2 G. & D. 10.

(*l*) *E. v. Harwich (Mayor, &c.)*, 8 A. & E. 919; 1 P. & D. 134.

omitted to make out a *burgess list* (*m*) so that there was no list before the mayor at the revision Court in which the name of a claimant for that parish could be inserted; it was held that as the party had made a claim which had been rejected, the Court had power to order his name to be inserted on the *burgess-roll* (*n*).

So where a *burgess list* was defective, but the mayor had treated it as valid by expunging a name therefrom, the party whose name was expunged was held to be entitled to a *mandamus*, and that the defectiveness of the list was no answer thereto (*o*). And so is a person who has been omitted from the *burgess list* because of his refusal to pay an illegal rate (*p*).

If the mayor does not show cause against the rule for a *mandamus*, the person on whose objection the name was expunged may do so (*q*).

The rule should follow the words of the Act; "to insert the name of A. B. upon the *burgess roll*" (*q*).

The rule must be applied for before the end of the term next after the revision at which the claim was rejected, or the name expunged (*r*).

In the case of a particular office, if it be already full by the possession of an officer *de facto*, a *mandamus* will not be granted to proceed to a new election until the person in possession has been ousted upon proceedings in *quo warranto* (*s*).

Thus, where a councillor had, *during his term of office*, been left off the *burgess-list* by the overseers for alleged non-payment of rates, but continued to exercise the office, the Court determined that they would not, on affidavit of these facts, issue a *mandamus* to the mayor to proceed to a new election, as

(*m*) Under 5 & 6 Will. 4, c. 76. s. 15, App., p. x.

(*n*) *R. v. Lichfield (Mayor, &c.)*, 1 Q. B. 453; 1 G. & D. 28.

(*o*) *R. v. Dover (Mayor, &c.)*, 11 Q. B. 260.

(*p*) *R. v. New Windsor (Mayor, &c.)*, 7 Q. B. 908.

(*q*) *R. v. Exeter (Mayor, &c.)*, L. R. 4 Q. B. 110, 114.

(*r*) 7 Will. 4 and 1 Vict. c. 78, s. 24, App., p. lxxxv.

(*s*) *R. v. Bankes*, 3 Burr. 1454; *R. v. Cambridge*, 4 Burr. 2011; *R. v. Radford*, 1 East, 80; *R. v. Truro*, 3 B. & A. 592. See also *R. v. Derby (Councillors)*, 7 A. & E. 419; *R. v. Hiorns, Id.* 960. And see the next chapter.

the vacancy must be first ascertained by a judgment on a *quo warranto* information (a).

Where an election has in fact been held (although by an erroneous construction of the Municipal Corporation Act) (b) for one councillor only instead of two, the candidate who was second on the poll cannot have a *mandamus* to admit him to the office; his remedy is either by *mandamus* to hold a new election for a second councillor, or (if the office have been filled in the meantime) by a *quo warranto* (c).

But where the name of a councillor has been omitted from the Burgess list, another councillor may be elected to supply his place (the proceedings being *bonâ fide*) though the former had not resigned nor been ousted on a *quo warranto*; so held on an application by him for a *mandamus* to restore him to his office (d).

A *mandamus* will also lie to compel a corporation to fix their seal to a public document, to hold a Court (e), or a meeting at which public business is to be transacted, such as the granting of corporate leases (f); or to a corporate officer, for the production, inspection, or delivery (g) of public books and papers (h); the delivery of the corporate insignia (i), and in like cases.

The time within which the application must be made is generally regulated by the practice of the Court; but in the case of an application by a Burgess to have his name inserted in the Burgess list, it is expressly required to be made before

(a) *R. v. Phippen*, 7 A. & E. 966; see also *R. v. Winchester (Mayor, &c.)*, 7 A. & E. 215.

(b) 5 & 6 Will. 4, c. 76, s. 32, App., p. xv.

(c) *R. v. Royle*, H. T. 1855. Rawlinson's Corporation Acts, 6th Ed., p. 42, n. 3.

(d) *R. v. Oxford (Mayor, &c.)*, 6 A. & E. 349.

(e) 3 Bl. Com. 110.

(f) Andr. 184; Barnard, 82. As to a *mandamus* to the council to pay instalments on a bond given to secure compensation to an officer whose place was abolished by the Municipal Corporation Act (under sec. 67); see *R. v. Poole (Mayor, &c.)*, 1 Q. B. 616; 1 G. & D. 728. See also *R. v. Kendal*, 1 Q. B. 386.

(g) See *R. v. Greene*, 6 A. & E. 549; *R. v. Hopkins*, 1 Q. B. 161.

(h) Comb. 102; 2 Stra. 948; 2 Barnard, 235; 1 Bl. Rep. 50. See *R. v. Greene*; *R. v. Hopkins*, *ut supra*.

(i) *Exp. Downton (Mayor)*, Q. B. 14 J. P. 319.



the end of the term next following the act complained of (*k*).

The general course of the proceeding is as follows:—

The party who applies for the writ does so upon a suggestion, supported by oath, of his own right, and the refusal to do the act sought to be enforced (*l*).

A rule is first granted (except in some general cases, where the probable ground is manifest, and where the writ is peremptory in the first instance) (*m*), directing the party complained of to show cause why the writ should not issue. If he shows no sufficient cause, or does not submit at once to the application, the writ is issued in the alternative to do the act, or show some reason to the contrary, to which an answer or *return* must be made by a certain day (*n*).

If the party to whom the writ is directed makes no return, he is punishable by attachment as for contempt. If a return is made and the prosecutor wishes to object to it in point of law, he must demur; and if it is insufficient in law a peremptory *mandamus* is awarded (*o*); obedience to which will also be enforced by attachment. If the return is disputed by the applicant, or prosecutor, as being false in fact, he may traverse it; and if an issue is raised upon a point of fact, it may be tried before a jury (*p*), and if judgment is obtained by the prosecutor, a peremptory *mandamus* will also issue in this case (*q*).

In order however to expedite proceedings in *mandamus*, as far as they affect *corporate offices* in boroughs, it has been enacted (*r*), that the party making the application may give a

(*k*) 7 Will. 4 & 1 Vict. c. 78, s. 24, App., p. lxxxv. See the cases decided upon this section, *supra*, pp. 86, 87.

(*l*) See *R. v. Brecknock, &c., Company*, 3 A. & E. 217.

(*m*) A *mandamus* to insert a name in the burgess roll has been held not to be necessarily peremptory in the first instance: *R. v. Eye (Mayor)*, 9 A. & E. 670. But see *R. v. Dover (Mayor, &c.)*, 11 Q. B. 260.

(*n*) See 3 Bl. Com. 111, and cases there cited.

(*o*) 6 & 7 Vict. c. 67, s. 1, App., Part II, p. cclxxxv.

(*p*) See 9 Anne, c. 203; 1 Will. 4, c. 21.

(*q*) See 3 Bl. Com. *ut supra*. See also 6 & 7 Vict. c. 67, and 1 & 2 Will. 4, c. 58, s. 8. As to costs see 7 Will. 4 and 1 Vict. c. 78, s. 24, *ut supra*, and *R. v. Bridgnorth (Mayor)*, 10 A. & E. 66.

(*r*) 6 & 7 Vict. c. 89, s. 5, App., p. cxii.

written notice to the party to be affected by the writ ten days before making the application, stating the name and description of the applicant, and the grounds of the application, accompanied with a copy of the affidavits in support of the same; whereupon the opposite party may show cause in the first instance, and if no sufficient cause be shown the Court may, if they think fit, make the rule for the *mandamus* absolute, or grant a peremptory *mandamus* in the first instance (a).

It has been held that neither a burgess (b) nor a coroner (c) holds a *corporate office* within the meaning of this section, which applies only to the *governing* officers of a corporation.

A writ of error may be brought upon a judgment in *mandamus* (d), but no action or other proceeding will lie against any person for any thing done in obedience to a peremptory *mandamus* (e).

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(a) See further the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), ss. 66, 67.

(b) *R. v. Milner*, 5 Q. B. 589.

(c) *R. v. Grimshaw*, 5 Dowl. & L. 249.

(d) 6 & 7 Vict. c. 67, s. 2.

(e) *Id.* s. 3. As to the payment out of the borough fund of the costs of a *mandamus*, see Chap. XXVII.

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## CHAPTER XXIX.

### *Of Proceedings by Quo Warranto.*

A writ of *quo warranto* is in the nature of a writ of right for the Crown, against any one who claims or usurps any office, franchise, or liberty, to inquire *by what warrant*, or authority, he supports his claim, in order to determine the right (*f*).

The writ being a prerogative writ, and the proceedings thereon being attended with considerable delay, in order to render the remedy more speedy and available in the decision of corporation disputes between party and party, without any intervention of the prerogative, it was enacted by the 9 Anne, c. 20 (*g*), that an *information*, in the nature of a *quo warranto*, might be brought with leave of the Court, at the relation of any person desiring to prosecute the same, who is then styled the *relator*, against any person usurping, intruding into, or unlawfully holding any franchise or office in any borough corporate; and the statute provided for the speedy determination of the information, and directed that if the defendant be convicted, judgment of ouster, as well as fine, might be given against him, and that the relator should pay or receive costs according to the event of the suit (*h*).

In the case of a mayor, alderman, councillor, or burgess, the application must be made within twelve months after the election, or the disqualification, of the person against whom the application is made (*i*). But even though the application be made within the limited period, the Court will not grant it as a

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(*f*) 3 Bl. Com. 262.

(*g*) App., Part II., p. cclxv.

(*h*) See 3 Bl. Com. 264.

(*i*) 7 Will. 4 & 1 Vict. c. 78, s. 23, App., p. lxxxiv. See also 6 & 7 Vict. c. 89, s. 1, App., p. cx.

matter of right, if it appears there has been an unreasonable delay in making the application. Thus, where a person was enrolled a burgess in November, and an application for a *quo warranto* was made on the last day of the following Hilary Term, the Court refused a rule, as no explanation was given of the delay (a).

Where the disqualification is a continuous one, as where a party becomes disqualified (b) by reason of his entering into a continuing contract with the corporation, the provisions of the statute do not apply (c).

By a rule of Court, leave will not be given to file an information in the nature of a *quo warranto*, unless, at the time of moving, an affidavit be produced, by which some person shall depose on oath that such motion is made at his instance, as relator (d). It has been held to be a sufficient compliance with the terms of this rule, if the deponent swears, that he had directed an application to be made to the Court for a *quo warranto*, and that the motion would be made at the instance of the deponent as relator (e); but it will not be sufficient to state that it is the deponent's *intention to become* the relator (f).

It is not necessary that the relator should be a *burgess*; it will be sufficient if he is an *inhabitant* of the borough, and subject to the control and government of the corporation (g). But the Court will require that the affidavit should show that the proposed relator is either a burgess or subject to such control (h). And it seems if he is not a member of the corporation, the Court will require a stronger case to be made out before they will give leave to file the information (i).

(a) *R. v. Hodson*, 4 Q. B. 648. See also *R. v. Preece*, 5 Q. B. 94; *R. v. Hindmarch*, L. R. 3 Q. B. 12.

(b) Under sec. 28 of 5 & 6 Will. 4, c. 76.

(c) *R. v. Francis*, 18 Q. B. 526; L. J. Q. B. 304.

(d) Reg. Gen. Q. B. M. T. 3 Vict. 1839, 11 A. & E. 2.

(e) *R. v. Anderson*, 2 Q. B. 140.

(f) *R. v. Hedges*, 11 A. & E. 163.

(g) See *R. v. Hodge*, 2 B. & A. 344; *R. v. Parry*, 6 A. & E. 848; *R. v. Quayle*, 11 A. & E. 508.

(h) *R. v. Thirlwall*, 33 L. J. Q. B. 171.

(i) See *R. v. Kemp*, 1 T. R. 3, n.; *R. v. Ogden*, 10 B. & C. 210.

When the application is made by *individuals*, and not by the corporation, or their representative the mayor, the Court will exercise a large discretion in granting a rule for an information, with reference to all the circumstances of the case, and particularly as to the promptness of the application, and the conduct and even the motives of the relator (*k*).

In no case will the Court grant an information unless it is made clearly to appear that the office is full *de facto*. It will not be sufficient to state merely that the party "has accepted the office;" but it must be shown in what manner he has done so; as that he has made the requisite declaration (*l*); or that he has acted in a corporate capacity (*m*), or the like.

Still less would it seem to be a ground for such an information, that a party has merely claimed to be a burgess (*n*); or even that he has allowed his name to remain on the roll after notice of objection to his qualification (*o*).

Where an office is held during pleasure (*e.g.*, that of clerk to the justices) (*p*) a *quo warranto* will not be granted (*q*).

As a general rule the title of the electors is not allowed to be questioned in a *quo warranto* impeaching the title of the person elected; though perhaps an exception may be made to this rule in a case where there is no other method of questioning the title of the electors (*r*).

A *quo warranto* may be granted for an usurpation of an office even after the resignation of it; for the resignation is no

(*k*) See *R. v. Marten*, 4 Burr. 2120; *R. v. Stacey*, 1 T. R. 3; *R. v. Trevenen*, 2 B. & A. 482; *R. v. Slythe*, 6 B. & C. 242; *R. v. Parry*, 6 A. & E. 810; *R. v. St. Mary, Lambeth*, 8 A. & E. 356; *R. v. Greene*, 2 Q. B. 460; *R. v. Ward*, L. R. 8 Q. B. 210; *R. v. Cousens*, *Id.* 216.

(*l*) Under 5 & 6 Will. 4, c. 76, s. 50. See *R. v. Slatter*, 11 A. & E. 505. See also *R. v. Tate*, 4 East, 357.

(*m*) See *R. v. Quayle*, 11 A. & E. 508; *R. v. Leeds (Mayor)*, *Id.* 512.

(*n*) *R. v. Whitwell*, 5 T. R. 85. See also *R. v. Pepper*, 7 A. & E. 745.

(*o*) *Re Armstrong*, 25 L. J.; Q. B. 238.

(*p*) Under 5 & 6 Will. 4, c. 76, s. 102.

(*q*) *R. v. Fox*, 8 E. & B. 939; 27 L. J. Q. B. 151.

(*r*) *R. v. Tugwell*, L. R.; 3 Q. B. 704; and see *R. v. Main*, 3 T. R. 396; *R. v. Harrold*, 7 Q. B. 361; *Symmers v. Reg.*, Cowp. 489, 507; *R. v. Hughes*, 4 B. & C. 368.

answer, though it may regulate the decision of the Court in imposing the fine (a).

One ground upon which the Court frequently refuses to grant a rule for the information is, that the relator has acquiesced or concurred in the election of the party against whom the application is made (b); as, *e.g.*, by administering the declaration to an officer (c); but it is no objection that the relator has frequently acted with the party in corporation business, it not appearing that he had actually concurred in the election (d); and even where a party is disqualified from being relator by reason of such concurrence, he may nevertheless make an affidavit in support of the application (e).

In some cases where collusion is suspected the Court will order the relator to give security for costs (f).

The Court will not grant leave to file an information against an individual member of a corporation where the object of the application is obviously to call in question the validity of the charter to the corporation (g). Though leave will not be refused merely because the granting it may, or even will, dissolve the corporation (h).

The proceedings in *quo warranto* may be carried on in the same manner as in the case of a *mandamus*, by giving notice to the party complained against, who may show cause in the first instance (i).

(a) *R. v. Warlow*, 2 M. & S. 75. See also *R. v. Payne*, 2 Chit. R. 367; *R. v. Morton*, 4 Q. B. 146.

(b) See Tancred on *Quo Warranto*, 37, 38.

(c) Under 5 & 6 Will. 4, c. 76, s. 50; *R. v. Greene*, 4 Q. B. 696.

(d) *R. v. Benney*, 1 B. & Ad. 684.

(e) *R. v. Brame*, 4 A. & E. 664.

(f) *R. v. Wakelin*, 1 B. & Ad. 50. See also *R. v. Greene*, *ut supra*; *R. v. Blizard*, L. R. 3 Q. B. 55.

(g) *R. v. Taylor*, 11 A. & E. 954.

(h) *R. v. White*, 5 A. & E. 613. See also per Cur. in *R. v. Parry*, 6 A. & E. 820.

(i) Under 6 & 7 Vict. c. 89, s. 5. See the last chapter.

# THE PRACTICE

AT A

## MUNICIPAL ELECTION.

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In this chapter it is intended to give a description of the various proceedings necessary under the existing law for the conduct of a contested municipal election.

### *Preliminary Notice.*

The Municipal Elections Act, 1875, sect. 1, requires the town clerk, nine days (*k*), at least (*l*), before the day fixed for any election of councillors, auditors, or assessors, to publish a notice in the prescribed form, or to the like effect, which notice is directed to be placed on the door of the town hall *and* in some conspicuous parts of the borough or ward for which the election is to be held.

For form of notice, see App., p. ccxvi.

### *Nomination Papers.*

At the time of the publication of the above notice, the town clerk must be provided with a sufficient number of nomination

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(*k*) In the case of an extraordinary vacancy in the office of councillor, auditor, or assessor in any borough, whether divided into wards or not, the election is to take place not later than fourteen days after notice has been given to the mayor, or town clerk, and the day for holding the election is to be fixed by the mayor, *id.* s. 9, and 16 & 17 Vict. c. 79, s. 11.

(*l*) This means clear days (*Reg. v. Middlesex JJ.*, 14 L. J. M. C. 139. *Reg. v. Aberdare Canal Company*, 19 L. J., Q. B. 251); and by sec. 11 of the same Act, Sundays, Christmas Day, Good Friday, and days set apart for public holidays, fasts, or thanksgivings, are to be excluded in reckoning time.

papers to supply any enrolled burgess with as many as may be required.

Nomination papers are required to be signed by two enrolled burgesses, as proposer and seconder, and by eight other registered burgesses as assenting to the nomination (*a*).

For form of nomination paper see App., p. ccxcvii.

The town clerk is under no obligation to supply nomination papers to any persons other than enrolled burgesses, that is, persons entitled to vote in the election for which the papers are required. He is, however, required upon the request of any enrolled burgess, to fill up a nomination paper in due form (*b*).

Nomination papers are required to be delivered to the town clerk by the candidate himself, or his proposer or seconder, seven days at least (*c*) before the day of the election, and before five o'clock in the afternoon of the last day on which they may be delivered (*d*).

If any candidate nominated be absent from the United Kingdom, his nomination will be void unless at the time of nomination his written consent, given before two witnesses within one month of the day of his nomination, is produced (*e*).

Any person who forges, or fraudulently defaces any nomination paper, or delivers to the town clerk any nomination paper, knowing the same to be forged, is guilty of a misdemeanor and will be liable to a term of imprisonment (*f*). It will be the duty of the town clerk to proceed against any person so offending. The delivery of the nomination paper by the candidate, or his proposer or seconder, will be some guarantee of its genuineness.

### *Notice to the Candidates.*

Immediately upon the receipt of a nomination paper the town clerk is required to send notice of such nomination to the person nominated (*g*).

(*a*) 38 & 39 Vict., c. 40, s. 1, App., p. ccxciii.

(*b*) *Id.* s. 1, sub-sec. 2, App., p. ccxciii.

(*c*) See note (*k*) p. 205.

(*d*) *Id.* s. 1, sub-sec. 3, App., p. ccxciii.

(*e*) *Id.* s. 2, App., p. ccxciv.

(*f*) Sec. 3 of the Ballot Act, 1872, applied by 38 and 39 Vict., c. 40, sec. 1, sub-sec. 4, App., p. ccxciv.

(*g*) 38 & 39 Vict., c. 40, s. 1, sub-sec. 3, App., p. ccxciii.



It seems desirable, in order that persons nominated may, if they so wish, withdraw from candidature, to state shortly in this notice the steps to be taken for that purpose. As the time during which candidates may withdraw is so very short it is desirable, whenever practicable, that this notice should be delivered personally. At all events, the town clerk should use the most speedy means of bringing to the notice of the candidate the fact of his nomination.

The following form may be used :—

Borough of *N.*

Election of ——— councillors for ——— ward in the said borough [*or* the said borough.]

To Mr. ———.

In pursuance of the Municipal Elections Act, 1875, I hereby give you notice that you have been nominated as a candidate at the election of ——— councillors for ——— ward in the borough of *N.* [*or* the said borough] to be held on ——— day the ——— day of ——— 187—.

If you do not desire your name to remain as a candidate you may withdraw from your candidature by filling in and signing the annexed form and delivering the same to me at the Municipal Offices, *N.*, not later than two o'clock in the afternoon on the ——— day of ———.

And I do hereby give you further notice that the mayor will attend at the town hall, on ——— afternoon, the ——— day of ———, between the hours of two and four o'clock, and will decide on the validity of objections made to nomination papers.

You are entitled to attend such proceedings and to appoint under your hand one other person for the same purpose, and during the time appointed for the attendance of the mayor, you, and the person to be appointed as aforesaid, have respectively, power to object to the nomination of every person nominated at the said election.

The appointment of the person to object on your behalf to nominations, may be in the form enclosed, and must be delivered to me before five o'clock in the afternoon on ——— the ——— day of ———.

Dated this ——— day of ——— 18 .

*A. B.*

Town Clerk of the said Borough.

Municipal Offices.

*N.*

### *Notice of Withdrawal.*

The notice of withdrawal to be effectual must be signed by the candidate, and must be delivered to the town clerk not later than two o'clock in the afternoon of the day next after the last day on which nominations may be delivered (*h*)

Notices of withdrawal are to take effect in the order in which they are delivered (a). It is provided, however, that no notice shall have effect so as to reduce the number of candidates below the number of vacancies to be filled (a). Care should therefore be taken to endorse on each notice of withdrawal, the exact time at which it was received by the town clerk.

The following form of withdrawal may be used :—

To the Town Clerk of the Borough of *N.*

Election of ——— councillors for ——— ward in the borough of *N.* [*or the said borough*] to be held on the ——— day of ——— 18—.

I hereby give you notice that I withdraw my name from candidature at the said election.

Witness my hand this ——— day of ———, 18—.

*Objections to Nomination papers—how disposed of.*

On the day next after the last day for the receipt of nomination papers, between the hours of two and four in the afternoon, the mayor is to attend at the town hall and decide on the validity of every objection duly made to a nomination paper. The candidate and one person appointed by him or on his behalf as hereafter mentioned may appear before the mayor and object to the nomination papers of every person nominated. The mayor has power to exclude every other person during these proceedings. The candidate by virtue of his nomination has an absolute right to be admitted to these proceedings. This is not so with his agent, who to be entitled to attend must be appointed in writing for the purpose under the hand of the candidate, or in case of his absence from the United Kingdom, under the hand of his proposer or seconder. The appointment must be delivered to the town clerk before five o'clock in the afternoon of the last day on which nominations may be delivered. In practice no doubt it will be found expedient to deliver this appointment at the same time as the nomination. The person appointed need not be a person entitled to vote in the election. It may be the proposer or seconder or one of the

persons assenting to the nomination, or any other person the candidate may think fit to appoint (*b*).

The following form may be used in the appointment of persons to attend these proceedings:—

To the Town Clerk of the Borough of——

Election of —— councillors for —— ward in the said borough (*or* the said borough) to be held on the —— day of——18 .

I —— having been nominated as a candidate at the said election do hereby in exercise of the powers contained in sec. 1, of the Act 38 & 39 Vict. c. 40, appoint —— to object on my behalf to nomination papers of persons nominated at the said election.

Witness my hand this —— day of —— 18 .

The mayor's duty appears to be merely to decide on objections which may be actually made to nomination papers, *such objections being made in writing*, and he has no jurisdiction over objections otherwise made or over objections which may exist but to which his attention is not duly called by some qualified objector. *The decision of the mayor on objections to nomination papers, whether he allows or disallows the same, must be given in writing.* It seems advisable, in order to connect the decision with the nomination paper to which it relates, that it should be endorsed on the back thereof together with a memorandum of the objection and of the person by whom such objection was raised. If the mayor disallows any objection to a nomination paper his decision is final. If he allows the objection, however, his decision is subject to reversal on petition questioning the election or return (*b*).

Although it will be necessary for the mayor to continue his sitting until the two hours fixed for this purpose have expired he would be justified in refusing to re-open the consideration of an objection after having once given his decision thereon.

The case may arise in consequence of the mayor's decision on objections to nominations that the number of candidates, excluding those who have given notice of withdrawal, may be less than the number of vacancies to be filled up.

It is suggested that in such a case the last withdrawal would be ineffectual, and the candidate, notwithstanding such with-

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(*b*) 38 & 39 Vict. c. 40, s. 1, sub-sec. 3, App., p. ccxciii.

drawal, unless his nomination should be rejected by the mayor on objection made, must be considered a duly qualified candidate.

The notices of withdrawal cannot, therefore, come into operation until the mayor has finally decided on objections to nominations (a).

*Notice of Candidates duly Nominated.*

After the mayor has decided on objections to nomination papers, and it is ascertained what persons remain duly nominated, the town clerk is required to cause the surnames and other names of all such persons, with their respective places of abode and descriptions, and the names only of their respective proposers and seconders (but not the names of the other subscribers of the nomination papers), to be printed and published in the same way as before mentioned with respect to the notice of the election (b).

This notice must be given at least four days before the day of election. There is no advantage to be obtained from delaying the publication until the last day on which the same may be legally published. It seems advisable on all grounds to publish this notice with as little delay as practicable. The names of the candidates should be arranged in the order in which they will appear on the ballot paper (b).

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(a) 38 & 39 Vict. c. 40, s. 7, App., p. ccxcv.

(b) 38 & 39 Vict. c. 40, s. 1, sub-sect. 3, App., p. ccxciii.

The following form may be used :—

*Borough of—— to Wit.*

Notice is hereby given that the following persons respectively have been duly nominated for the office of councillor of the said borough at elections of —— councillors for each of the several wards of the said borough [*or* an election of councillors for the said borough] to be held on —— the —— day of —— 18—, that is to say :—

	Surname.	Other Names.	Abode.	Description.	Proposer.	Seconder.
For <i>B.</i> ward						
For same ward						
For same ward						
For <i>C.</i> ward						
For same ward						
&c. &c.						

Dated this —— day of —— 18—.

*A.B.*

Municipal Offices, *N.*

*Town Clerk.*

*The Ballot Papers.*

Immediately after the mayor has decided on objections to nomination papers, and it is ascertained that an election must be held, the preparation of the ballot papers should have attention.

The Ballot Act, 1872, Rule 22, provides as follows :—

Every ballot paper shall contain a list of the candidates described as in their respective nomination papers, and arranged alphabetically in the order of their surnames, and (if there are two or more candidates with the same surname) of their other names ; and it shall be in the form set forth in the second schedule to this Act, or as near thereto as circumstances admit, and shall be capable of being folded up.

Section 6 of the Municipal Elections Act, 1875, directs that at any election of auditors and assessors one ballot paper only

shall be used, and that in such ballot paper the names of the candidates for the respective offices shall be separate, and distinguished so as to show the office for which they are respectively candidates.

The forms of the ballot papers will be found at App., p. cxcviii.

Nothing is to be printed on the ballot paper except in accordance with the said rule.

The surname of each candidate, and if there are two or more candidates of the same surname also the other names of such candidates are to be printed in large characters, and the names, addresses, and descriptions, and the number on the back of the ballot paper are to be printed in small characters.

It is important that the space allotted on the ballot paper for each candidate should be so ample that the voter may have as large a space as possible in which to place the cross by which he signifies the candidate for whom he intends to vote. Where practicable an inch at least on the ballot paper should be allowed to each name. If the number of candidates should be excessive this would have to be reduced to prevent the ballot paper becoming unwieldy.

It will be found convenient to bind the ballot papers in books corresponding with the number of voters allotted to vote at the respective polling stations at which they are to be used. It is left to the judgment of the mayor to provide as many ballot papers as he may think necessary for effectually taking the poll (*a*). Great care must be taken, however, to provide sufficient ballot papers, as an error in this respect would probably jeopardise the election. No doubt the mayor would be responsible for a corrupt exercise of the discretion vested in him; but even if he should by an error of judgment provide an insufficient quantity of ballot papers, and burgesses were deprived of the opportunity of recording their votes to an extent affecting the election, the election would be voidable.

Each book of ballot papers should have on the outside a label with a full description of the name of the borough, ward, and polling station at which it is to be used.

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(*a*) 38 & 39 Vict. c. 40, s. 4, App., p. cxciv.

*Tendered Ballot Papers.*

Rule 27 in the first schedule to the Ballot Act, 1872, makes provision for recording the votes of persons who have been personated, and make a representation upon oath as to their identity to the presiding officer, and answer the prescribed questions (b).

In such cases the voters are not to mark an ordinary ballot paper, but the presiding officer is to supply another ballot paper called a "tendered ballot paper," and which is to be of a different colour from the ordinary ballot paper though in all other respects similar. This makes it necessary that the mayor should supply each presiding officer with a sufficient number of "tendered ballot papers."

The percentage of tendered votes is very small. One tendered ballot paper for every forty ordinary ballot papers will commonly be found sufficient. It will be found convenient to bind and label the tendered ballot papers in the same manner as the ordinary ballot papers in books of proportionate size.

*Stamping-instrument for Official Mark.*

Section 2 of the Ballot Act, 1872, provides that at the time of voting the ballot paper shall be marked on both sides with an official mark. The mayor must provide each presiding officer with an instrument for this purpose.

The ballot paper must be marked with the official mark immediately before being delivered to the voter.

Considerable difference of opinion prevails as to the most suitable instrument for this purpose. Some prefer perforation, others embossing, and others an inking stamp. Each has its advantages and disadvantages. The necessity for stamping the ballot paper on both sides causes the ink stamp to be less expeditious than the other methods, although it has this strong feature in its favour that the mark can be readily seen. Perforation is more expeditious than the ink stamp, as the impression can be made at the same time on both sides of the ballot

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(b) See App., p. ccxx.

paper. The perforating machine is, however, liable to get out of order. The ballot papers may be embossed with an ordinary lever press. To stamp the ballot paper both back and front a one operation it is only necessary to fold the paper in two. These presses are not so liable to get out of order as the perforating machines.

An interval of seven years is required to intervene between the use of the same official mark at elections in any borough. An alteration may be made in both the perforating machine and the embossing press with little expense.

It is desirable to choose such devices as may not be easily forged.

#### *Seal.*

Each presiding officer must be furnished with a seal to enable him to seal the ballot boxes and documents required to be sealed by him.

The seal may conveniently bear the name of the borough or ward, and the number or other description of the polling station. It is not necessary to observe any secrecy as to the seal, therefore the same seal will serve for all times.

#### *Ballot Boxes.*

Rule 23 of the first schedule to the Ballot Act, 1872, provides that the ballot box shall be so constructed that ballot papers can be introduced therein but cannot be withdrawn therefrom without the box being unlocked. The presiding officer is required to place his seal on the ballot box in such a manner as to prevent the same from being opened without breaking such seal, and to keep it locked and sealed during the poll.

After the close of the poll the ballot box must be sealed up so as to prevent the introduction of additional ballot papers.

Care must be taken to have the ballot boxes of sufficient capacity to hold the ballot papers of the voters allotted to vote at the respective polling stations where the same are to be used.

The ballot boxes should be labelled in the same way as the books of ballot papers to correspond with the polling stations to which they belong.



To carry out a municipal election in accordance with the Ballot Act the following forms must be provided :—

Declaration of inability to read; list of votes marked by presiding officer; tendered votes list; ballot paper account; envelope (a) for unused and spoilt ballot papers; envelope for tendered ballot papers; envelope for register and counterfoils; envelope for tendered votes list; list of votes marked by the presiding officer, and statement of the number of voters whose votes are so marked by the presiding officer under the heads "physical incapacity," "Jews," and "unable to read," and the declarations of inability to read.

The following forms may be used:—

Declaration of inability to read, see App., p. ccxxviii.

Election of \_\_\_\_\_ councillors for \_\_\_\_\_ ward in the borough of *N.* or  
(the borough of *N.*) on the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_.

Polling station No. \_\_\_\_\_

Number of Voters on the Register.	Name of Voter.	Reason for which Vote marked by the Presiding Officer.*

Statement of the number of the voters whose votes are so marked by the presiding officer under the following heads, viz. :—

Physical incapacity	-	-	-	-	-
Jews	-	-	-	-	-
Unable to read	-	-	-	-	-
Total	-	-	-	-	-

\* "Physical incapacity," "Jew," or unable to read," as the case may be.

(a) These envelopes should be of sufficient capacity, and of cloth-lined paper, or other strong material.

*The Ballot Act, 1872.*

Election of ——— councillor for ——— ward in the borough of *N.* or  
(the borough of *N.*) on the ——— day of ——— 18 .  
Polling station, No. ———

*The Tendered Votes List.*

Name of Voter.	Number on Register.

*The Ballot Act, 1872.*

Election of ——— councillors for (——— ward in the borough of  
*N.*) or (the borough of *N.*) on the ——— day of ——— 18 .  
Polling station, No. ———.

*The Ballot Paper Account.*

Ballot papers received, viz. :—	Ballot Papers accounted for,
Ordinary Ballot papers -	viz. :—
Tendered Ballot papers -	Ballot papers in the Ballot
	Box -
	Ballot papers tendered -
	Ballot papers unused, viz :
	Ordinary -
	Tendered -
	Ballot papers spoilt -
Total. . . .	Total . . . .

(Signed)

*Presiding Officer.*

The following articles must also be provided :—

Sealing wax (two sticks to every ballot box is sufficient);  
matches; penholders and pens; ink; blotting paper; pencils;  
marking pencils; Old Testament; New Testament.

It is very important that every ballot box should be supplied  
with all these necessities. It is recommended that a list should

be made of requisites for every ballot box, and each article noted as it is put in the box. The omission of any of the above requisites may cause serious delay. It will be necessary to provide a sufficient number of pencils for the use of the voters in the marking compartment. The pencils should be strong, and should be sharpened at both ends. The presiding officer should have an extra supply of marking pencils in case any are taken away from the compartments.

*Polling Districts, Polling Places and Polling Stations.*

Town councils may divide their boroughs or any ward or wards therein into polling districts as they may think fit, and the overseers and the town clerk must prepare the list of burgesses in conformity with such division (a).

The borough and each ward, until the council has exercised the power thus conferred on them, will be a polling district.

It is the duty of the mayor to provide in each district at least one polling place, and at every polling place a sufficient number of polling stations for the accommodation of the electors entitled to vote at such polling place, and he must distribute the polling stations amongst those electors in such manner as he thinks most convenient.

The following form of order dividing the borough or ward into polling districts may be used :—

That this council do hereby in pursuance of 38 & 39 Vict. c. 40, s. 10, order that the following wards in this borough [*or* this borough] be and the same are [*or* is] accordingly hereby divided for the purposes of the said Act and of the 5 & 6 Will. 4, c. 76, and 35 & 36 Vict. c. 33, into the polling districts following, that is to say,

One polling district [here set out the boundaries of the proposed district] to be called "The Polling District of ———."

[And so on describing each polling district in the like way.]

And that the town clerk do give public notice of the division of the said wards [*or* borough] as aforesaid into such polling district.

*Construction of Polling Stations.*

Rule 17 in the schedule to the Ballot Act, 1872, provides that a separate room or separate booth (that is, a separate polling

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(a) 38 & 39 Vict. c. 40, s. 10, App., p. cxcxv.

place), may contain a separate polling station, or several polling stations may be constructed in the same room or booth.

The question of concentrating a number of polling stations in one polling place or room, is of some importance, and so far as it enables the returning officer to have more complete supervision of the arrangements seems desirable if it does not inconvenience the voters. If this arrangement should however cause a large number of persons to collect near the polling place, the inconvenience of the voters may outweigh the advantages.

Such buildings or rooms should be selected as polling places as have a separate entrance and exit, so that voters shall proceed constantly in one direction.

The room should be on a level with the street. Steps either up or down stairs are very objectionable.

If arrangements are made for erecting in one room several polling stations, each polling station should be entirely separate from the other. Each station should, so far as practicable, be arranged so that the proceedings in one polling station may not be overheard in the other. The screen between the stations should not be of less height than eight feet.

It is necessary for the convenience of the voters and officers engaged in taking the poll, and for the proper conduct of the elections, that the station should not be less than twelve feet square.

The polling station should, if possible, be provided with separate doors for the admission and exit of the voters.

Each polling station requires a table and a number of seats sufficient to accommodate the presiding officer and his clerk, and the agents of the candidates, if any are appointed.

The table should be provided with a drawer for the safe keeping of the documents and things in the custody of the presiding officer.

The table should be placed at one end of the polling station, and the presiding officer should be seated behind it, facing the entrance. The clerk should sit next to the presiding officer, and the agents on either side of them. There should be a drop bar to separate the officers and agents from the voters. This arrangement will prevent the agents getting in front of the

table or near the marking compartments. The presiding officer will insist on the agents remaining in the places appointed for them.

The ballot box should be placed in the centre of the table.

The marking compartments should be placed against the side of the polling station, opposite to the presiding officer, so that he may see at a glance that the provisions of the Ballot Act are not infringed. In order to screen more effectually the marking compartments from the observation of persons passing in and out of the polling station, scantling of a sufficient height may be placed along side the marking compartments.

#### *Marking Compartments.*

The mayor is to furnish every polling station with such number of marking compartments as he considers may be necessary for taking the poll (a).

The number of voters allowed by the Ballot Act, namely, 150, Rule 16, for which a separate compartment must be provided, has in practice proved to have been well considered. It will not be found advisable, except in special circumstances, to assign more than 150 voters to a single marking compartment at a strongly contested election.

#### *As to the Construction of Marking Compartments.*

The marking compartments should be constructed of such width as to be capable of accommodating the voters. For this purpose a width of thirty inches will be found sufficient. It should be at least seven feet in height, and constructed so as to fold up, with a lid or desk at the back, at a convenient height from the ground.

The voter may be effectually screened whilst marking his vote, by placing a curtain in the front of a marking compartment thus constructed. There does not, however, appear any necessity for this, if care is taken to have the marking compartments of the width mentioned, as in that case the body of the voter will act as a complete screen.

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(a) 38 & 39 Vict. c. 40, s. 4, App., p. cxciv.

*Directions for the Guidance of Voters.*

The second schedule to the Ballot Act, 1872, prescribes the form for the guidance of voters in voting, and directs that the same shall be printed in conspicuous characters and placarded outside every polling station, and in every marking compartment of every polling station.

Form of directions for the guidance of the voter, see App., p. cccxxvii.

Care should be taken that in selecting illustrations of the form of a ballot paper the surnames of persons who are candidates at the election are not used. In some cases the voters might be misled thereby.

*Returning Officers.*

In boroughs not divided into wards, the mayor is the returning officer. In boroughs divided into wards, the respective aldermen appointed by the council, are the returning officers for the several wards.

*Presiding Officers and Clerks.*

The mayor must appoint a presiding officer to preside at each polling station and all such officers as may be necessary for effectually conducting the election. It will be found necessary, in addition to the presiding officer, to appoint a clerk at each polling station to act under his directions. In the selection of persons to perform the onerous duties to be carried out by these officers great care should be taken, as the proper conduct of the election must in a great measure depend upon their discretion and ability. Presiding officers should be thoroughly conversant with the duties they have to perform, so as to be prepared for any emergency which may arise during the course of the day at their respective polling stations. In practice it will be found best to secure the services of solicitors as presiding officers.

The directions for the guidance of presiding officers and clerks detail the whole of the duties of these officers, and contain directions as to every probable contingency upon which the presiding officer is likely to require guidance.

For form of these directions see p. 227.

*Agents of Candidates.*

Section 20 of the Ballot Act, 1872, provides that nothing in the Act shall be deemed to authorize the appointment of any agents of a candidate in a municipal election, but if in the case of a municipal election any agent of a candidate is appointed, and a notice in writing of such appointment is given to the returning officer, the following provisions of the Act with respect to agents of candidates shall apply :—

Rule 31.—The candidates may respectively appoint agents to attend the counting of the votes.

Rule 52.—The name and address of every agent of a candidate appointed to attend the counting of the votes shall be transmitted to the returning officer one clear day at least before the opening of the poll, and the returning officer may refuse to admit to the place where the votes are counted any agent whose name and address has not been so transmitted, notwithstanding that his appointment may be otherwise valid.

Rule 53.—If any person appointed an agent by a candidate for the purpose of attending at the polling station or at the counting of the votes, dies or becomes incapable of acting during the time of the election, the candidate may appoint another agent in his place, and shall forthwith give to the returning officer notice in writing of the name and address of the agent so appointed.

It will be seen from the above provisions of the Act that, although the manner in which agents to attend the counting of the votes are to be appointed, is prescribed, there is no direction as to the appointment of agents to attend the polling stations. It is only by inference it can be assumed the Act authorizes the appointment of agents for this purpose.

The 20th section of the Act above referred to, as far as its meaning can be ascertained, must be construed to treat the agents of candidates who have been appointed, by notice in writing given to the returning officer in all respects the same as agents duly appointed at a parliamentary election.

Agents to attend at the polling stations should be appointed by notice in writing, and notice of such appointment should be

given to the returning officer one whole day before the opening of the poll, as required by Rule 52.

It will be a matter of convenience to the returning officer, if the names of the agents are transmitted to him on a form to be provided by the returning officer, which should state the names of the agents appointed, and the particular polling stations to which each such agent is allotted, and the names of agents who will attend the counting of the votes. The subsequent proceedings of the returning officer will be materially assisted by his sending this form to each candidate. It may be delivered with the notice to the candidate of his nomination.

The Act does not limit the number of persons candidates may appoint either to attend at the polling stations or at the counting of the votes. The number, however, should not be unreasonable, and the returning officer would be justified in refusing admission to an excessive number of agents.

Rule 32.—The returning officer shall give to the agents of the candidates appointed to attend at the counting of the votes notice in writing of the time and place at which he will begin to count the same.

The following forms may be used for this purpose :—

Borough of——

Election of —— councillors for, —— ward in the said borough (*or* the said borough).

To Mr. ——

I, the undersigned, the returning officer at the election of —— councillors for —— ward in the borough of —— (*or* the borough of ——) to be held on —— the —— day of —— 18 , do hereby give you notice that I shall proceed to count the votes recorded at the said election at —— o'clock in the afternoon of the day of election at ——

That if you intend to be present at the counting of the votes you must attend at the —— at —— o'clock to make the declaration of secrecy required by the Ballot Act, 1872.

Dated this —— day of —— 18 .

Municipal Offices.

Alderman (*or* Mayor) Returning Officer.

Borough of——

Election of —— councillors for —— ward in the said borough (*or* the said borough) to be held on —— the —— day of —— 18 .

To

On behalf of the returning officer at the said election I hereby give you notice that if it is your intention to appoint persons to act as your agents at the —— polling stations at the said election you must notify to me the



appointment of such persons and the stations at which they are to act not later than —— o'clock in the evening of —— the —— day of ——

You must also state whether any of the same persons are appointed to attend as your agents at the counting of the votes and if not you must state the names of the persons who are so appointed. You may appoint one person to act as your agent at each polling station in the ward (*or* borough) and not more than —— persons to attend at the counting of the votes.

That if the information now requested is not forthcoming at the time before mentioned the appointments cannot be confirmed.

That the persons appointed must attend at —— on —— evening next at —— o'clock to make the declaration of secrecy required by the Ballot Act, 1872. Town Clerk.

Dated this —— day of ——.

A Form is enclosed which if you please you may fill up and return to me addressed to the returning officer at the said election.

Borough of ——

To the returning officer at the election of —— councillors for —— ward in the said borough (*or* the said borough) to be held on the —— day of —— 18 .

I —— having been duly nominated as a candidate at the said election do hereby appoint the following persons to act as my agents at the polling stations at the said election, namely :—

Polling Station No. 1.
” No. 2.
” No. 3.
” No. 4.
” No. 5.
And so on.

I do also appoint the following persons to attend at the counting of the votes, namely :—

According to the number in each case limited.	{	1
		2
		3
		4
		5
		6
		7
		8
		9
		10
		11
		12

Witness my hand this —— day of —— 18 .

The mayor must at least four days before the day of election give such public notice as may be required by law of the situation, division, and allotment of polling places for taking the

poll at any municipal election and of the description of voters entitled to vote thereat and at the several polling stations (a).

The notice of the situation of polling stations now required to be given is regulated by 5 & 6 Will. 4, c. 76, s. 33, which provides that the mayor shall cause to be affixed on the most conspicuous part of each booth the names of the parts of the borough for which such booth is allotted, and no person shall be admitted to vote at any such election except at the booth allotted for the part wherein the qualifying property is situate. It is also provided by the same section that no municipal election shall be holden in any borough, in any church, chapel, or other place of public worship.

It is desirable that this notice should be published as early as possible after it has been ascertained that an election must be held, in order that the electors may have an opportunity of becoming well acquainted with the situation of the polling places and polling stations.

#### *The Declaration of Secrecy.*

Rule 54, in the first schedule to the Ballot Act, 1872, provides that every returning officer, and every officer, clerk, or agent authorized to attend at a polling station or at the counting of the votes, shall before the opening of the poll make a statutory declaration of secrecy in the presence, if he is the returning officer, of a justice of the peace, and if he is any other officer or an agent, of a justice of the peace, or of the returning officer.

For form, see App., p. cccxviii.

The names of the agents appointed by the candidates to attend the polling stations, and at the counting of the votes, having been ascertained, and the officers and clerks having been selected, the mayor will appoint some day and hour for taking the declarations of these persons.

It will be found advisable to appoint the evening of the day before the day of election to take the declarations.

The forms of declarations should be filled in so far as practicable so that the proceedings may not be delayed.

The mayor is the best person to take these declarations.

He must, however, if he is the returning officer, himself make a declaration before another justice of the peace. In the case of a borough divided into wards the mayor, town clerk, and other officers, not acting at the polling stations, but whose duties may call them there during the day of election, or at the counting of the votes, should make this declaration as to each ward. It seems desirable that candidates, and other persons who enter the polling stations, or who intend to be present at the counting of the votes, should make the declaration of secrecy before the commencement of the poll. The returning officer or presiding officer has, however, no power to exclude a candidate from any polling place or from the counting, though he has not made the declaration of secrecy (a).

The presiding officers and clerks appointed to attend the poll and at the counting of the votes should be formally appointed by the mayor, and such appointment should describe the particular polling station at which the officer is to act. Each presiding officer and clerk when they have made the declaration should be given his appointment and a copy of the directions for the guidance of presiding officers and clerks. The presiding officers should be furnished with the keys of the respective ballot boxes.

The following form of appointment may be used :—

Borough of *N*.

Election of ——— councillors for ——— ward in the borough of *N*.  
[or for the borough of *N*.] to be held on the ——— day of ——— 18 .

By virtue of the authority contained in the 35 & 36 Vict. c. 33, and 38 & 39 Vict. c. 40, and of any law in this behalf enabling me ———

I ——— mayor of the borough of *N*. do hereby appoint Mr. ———, presiding officer at the said election to preside at polling station No. ——— situate ———.

Given under my hand this ——— day of ——— 18 .

The agents, if any are appointed, should after they have made the declaration of secrecy be furnished by the mayor with a card showing the appointment and stating the polling station where they are to act. All other persons having made the declaration of secrecy should be furnished with cards authorizing them to attend at the polling stations, or at the counting of the votes, as the case may be.

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(a) See *Clementson v. Mason*, 10 L. R. C. P. 209; 32 L. T. (N. S.) 325.

The 4th section of the Ballot Act, 1872, must be read to each declarant before taking the declaration of secrecy. As the section is of considerable length it will be found advantageous to read the section to as large a number of persons as possible at the same time, but care must be taken that every person who takes the declaration has heard the section read.

In boroughs divided into wards the aldermen of the respective wards who are returning officers must before the commencement of the election make the declaration of secrecy before a justice of the peace.

### *The Poll.*

The mayor should make arrangements for the ballot boxes being taken to the polling stations before a quarter to nine on the morning of the election. The ballot boxes should be locked and left in charge of the constables at the respective stations, who should be instructed to be at their posts not later than half-past eight. If it is not found convenient for the mayor to send the boxes to the polling stations each presiding officer should call at the town clerk's office for his ballot box on the morning of the election. It seems very undesirable to allow the presiding officer to have the custody of the ballot box and its contents on the evening previous to the election.

By the 5 & 6 Will. 4, c. 76, s. 32, the poll at every election of councillors is to commence at nine o'clock in the forenoon, and finally close at four o'clock in the afternoon of the same day. The 7 Will. 4, and 1 Vict. c. 78, s. 18, provides that the poll may be closed at any time before four o'clock if one hour shall elapse without a vote having been tendered.

There may be cases in which it is practicable to take advantage of these provisions. It seems almost impossible, however, to do so if the polling places are numerous or widely apart unless instantaneous communication is established between them.

The presiding officer should be at his polling station at least a quarter of an hour before the time fixed for the commencement of the poll.

He should see that no persons come into the polling station beside the clerks, the candidates, and their agents. He should require each agent to produce his authority to be present at the polling station, and should see that the person is the person appointed, and not a substitute.

The agents should be accommodated at the table, and should be required to take their positions behind the barrier separating the voters from the officer's table.

The presiding officer should see that the agents do not interfere with, or talk to, the voters, and should take care that the provisions of sections 3 and 4 of the Ballot Act are not infringed by any person in his polling station. The following form contains as far as can be foreseen instructions to the presiding officer how to act in any emergency or difficulty that may arise during the poll.

Presiding officers should make themselves thoroughly acquainted with their duties, and in the event of any questions arising upon which there is any doubt should immediately refer to their instructions. The town clerk or his deputy should be in attendance at some defined place during the election in order to advise on any difficulty that may arise.

*Directions for the guidance of Presiding Officers and Clerks.*

Before the commencement of the poll the presiding officer should examine the contents of the ballot box and see that all the necessaries are there, and in case of any deficiency he should at once communicate with the returning officer.

The poll will open at nine o'clock.

There will be one presiding officer and one clerk at each polling station.

Immediately before the commencement of the poll the presiding officer will show the ballot box empty to such persons as may be present.

He will then lock the box and seal it so as to prevent its being opened without breaking the seal, and shall keep it so locked and sealed and in his view.

On a voter applying for a ballot paper the presiding officer will ask him his name and will then refer to the register for

such name, and on finding it, call the number, name, and description of the voter, as therein stated.

The clerk will then—

1. Mark the number of the voter on the counterfoil of the ballot paper in the square immediately below the printed number (*a*).
2. Fold (*b*) the ballot paper and tear it from the counterfoil.
3. Stamp the ballot paper so folded near the centre.
4. Deliver it to the voter.

The presiding officer will then place against the voter's number on the register a tick or mark to denote that he has received a ballot paper.

The presiding officer may, and if required so to do by any two burgesses entitled to vote in the election, must put to any person applying for a ballot paper, at the time of his so applying, and not afterwards, the following questions, or either of them, and no others.

1. Are you the person whose name appears as *A. B.* on the burgess roll now in force for this borough, being registered therein as rated for property described to be situated in . (*specifying the street, &c., as described in the register*) ?
2. Have you already voted at the present election ?

And no person required to answer the said questions or either of them, shall receive a ballot paper until he shall have answered the same.

The presiding officer must not put any other questions than the above. If the voter answers the questions the presiding officer must give him a ballot paper notwithstanding anything which may be said by any of the agents. In case there is any question really affecting the voter, and which may lead to ulterior proceedings, the presiding officer should make a

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(*a*) It is suggested that a square should be placed on the counterfoil of the ballot paper for this purpose as shown in the form of ballot paper, App. p. cxcviii. By this means regularity as to the position in which the numbers are marked will be secured.

(*b*) It would not be necessary to fold the ballot paper if certain instruments for marking the official mark were used.

memorandum of the number and name of the voter for reference.

NOTE.—The presiding officer should ascertain from the returning officer, before the commencement of the poll, whether the agents are burgesses, so that he may determine who are entitled to join in requesting him to put the questions. He will, however, without any request, if he sees the necessity for the same, put the questions, or either of them, to the voter.

If a person representing himself to be a particular elector applies for a ballot paper after another person has voted as such elector, the presiding officer will, upon the applicant duly answering the foregoing questions and taking the oath, deliver to him one of the coloured ballot papers, called “tendered ballot papers,” instead of an ordinary ballot paper, and the clerk will enter the name of the elector and his number on the register on “the tendered votes list.”

Before a tendered ballot paper is delivered to a voter it must be marked with the official mark the same as an ordinary ballot paper.

The presiding officer will mark on the back of each “tendered ballot paper” the name and number of the voter tendering the same.

“Tendered ballot papers” must not be put into the ballot box, but must be set aside in the separate packet indorsed “tendered ballot papers.”

The following is the form of

#### OATH

To be administered (in addition to putting the foregoing questions) to persons applying for ballot papers in the names of electors after other persons have voted as such electors.

“You do swear (or ‘affirm’ if the person states that he is a Quaker or Moravian) that you are the same person whose name appears as A. B. on the burgess roll now in force for this borough, and that you have not before voted either here or elsewhere at the present election.

“So help you God.”

If the person declines to answer the said questions or to take the oath, the presiding officer must not deliver to him a tendered ballot paper.

If any voter applying for a ballot paper states that he is

unable to read, the presiding officer will administer to such voter "the declaration of inability to read," and will, in the presence of any of the agents of the candidates who shall be present, mark the vote of such voter in the manner directed by him, and cause the ballot paper so marked to be put into the ballot box. In case the voter does not know the names of the candidates for whom he wishes to vote, and presents a card upon which the names of the candidates are printed, and against certain names are placed crosses and the voters direct the presiding officer to mark the ballot paper in the same way, the presiding officer must act accordingly. In the event of the voter having no such card the presiding officer should read the names of the candidates commencing at the first and continuing to the last, and should at each name ask the voter if he wishes to vote for such candidate.

On the application of any voter who is incapacitated by blindness or other physical cause from marking his vote, or (if the poll be taken on a Saturday) of any voter who declares that he is of the Jewish persuasion, and objects on religious grounds to mark his vote in the manner prescribed, the presiding officer will mark the vote of such voter in the manner above mentioned, and cause the ballot paper so marked to be put into the ballot box.

The presiding officer will not suffer any person, except the authorized clerk, the candidates, and agents, to be present in the polling station at the voting of any voter for whom he marks a ballot paper.

The clerk will enter on "the list of votes marked by the presiding officer" the number on the register, and the name of each voter for whom the presiding officer marks a ballot paper, and in the third column he will state the reason why it is so marked, distinguishing them under the heads, "physical incapacity," "Jews," and "unable to read."

Should a voter inadvertently spoil his ballot paper, the presiding officer, on being satisfied as to such inadvertence, will furnish him with another ballot paper, and immediately cancel but not destroy such spoiled ballot paper, and will at the close of the poll seal up, with the unused ballot papers, all spoilt ballot papers.



The presiding officer will not deliver a ballot paper to any person whose name does not appear in the portion of the register furnished to him.

The presiding officer will, on a voter presenting a ballot paper bearing the official mark on the back (except a tendered ballot paper), allow him to place such paper in the ballot box.

The presiding officer will keep order in his station, and permit no one to enter except the voters, the candidates, and the authorized agents. He will not allow a greater number of voters in the station at a time than there are compartments; he will see that the voting is not hurried or hindered in any way; and will concentrate his attention particularly on observing that each ballot paper, before it is put into the ballot box, bears the official mark, and on the administration of declarations of inability to read, and the marking of ballot papers which he may be required to mark.

He is empowered to order any constable in attendance to remove any person misconducting himself or failing to obey his lawful orders. If the offender is a voter and has not voted, he must be allowed to vote.

He will see that the voters vote without undue delay, and are not interfered with or instructed in any way by the agents or by each other, and that they quit the polling station immediately after voting. He may give the voters general instructions as to the way in which ballot papers are marked, in case such instruction is necessary.

The poll will close at four o'clock, p.m. At the close of the poll the presiding officer will close the aperture of the ballot box so as to prevent the introduction of additional ballot papers, and will in the presence of the agents of the candidates (if any), make up into separate packets, sealed with his own seal and the seals of such agents (if any) as desire to affix their seals:—

1. The ballot box unopened, with the key attached.
2. The unused and spoilt ballot papers (both tendered and ordinary) placed together.
3. The tendered ballot papers.

4. The register and the counterfoils of the ballot papers, both used and unused.

5. "The tendered votes list" and "the list of votes marked by the presiding officer," together with a statement of the number of voters whose votes have been so marked, distinguished under the heads "physical incapacity," Jews, and "unable to read." The declarations of inability to read are to be inclosed in this packet.

He will deliver the ballot box and such packets to the returning officer at [here state the place where the ballot box and documents are to be delivered] accompanied by—

6. A "ballot paper account" accounting for the number of ballot papers, under the heads—

Ballot papers in ballot box.

Ballot papers unused.

Ballot papers spoilt.

Ballot papers tendered.

The presiding officer will see that all forms and documents requiring his signature are duly filled up and signed.

The presiding officer may permit any of the acts which he is required or authorized to do, except ordering the removal of any person, to be done by his clerk; but no person shall be allowed to put any ballot paper in the ballot box except in the presence of the presiding officer.

### *Offences at Elections.*

The Ballot Act, 1872, sections 3 and 4, provides as follows:—

Every person who—

- (1.) Forges or fraudulently defaces, or fraudulently destroys any nomination paper, or delivers to the returning officer (*a*) any nomination paper, knowing the same to be forged; or

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(*a*) This includes "town clerk," by 38 & 39 Vict. c. 40, s. 1, sub-sect. 4.

- (2.) Forges or counterfeits, or fraudulently defaces, or fraudulently destroys any ballot paper, or the official mark on any ballot paper ; or
- (3.) Without due authority supplies any ballot paper to any person ; or
- (4.) Fraudulently puts into any ballot box any paper other than the ballot paper which he is authorized by law to put in ; or
- (5.) Fraudulently takes out of the polling station any ballot paper ; or
- (6.) Without due authority destroys, takes, opens, or otherwise interferes with any ballot box, or packet of ballot papers then in use for the purposes of the election ;

shall be guilty of a misdemeanor, and be liable, if he is a returning officer or an officer or clerk in attendance at a polling station, to imprisonment for any term not exceeding two years, with or without hard labour, and if he is any other person, to imprisonment for any term not exceeding six months, with or without hard labour.

Any attempt to commit any offence specified in this section shall be punishable in the manner in which the offence itself is punishable.

In any indictment or other prosecution for an offence in relation to the nomination papers, ballot boxes, ballot papers, and marking instruments at an election, the property in such papers, boxes, and instruments may be stated to be in the returning officer at such election, as well as the property in the counterfoils.

4. Every officer, clerk, and agent in attendance at a polling station shall maintain and aid in maintaining the secrecy of the voting in such station, and shall not communicate, except for some purpose authorized by law, before the poll is closed, to any person any information as to the name or number on the register of voters of any elector who has or has not applied for a ballot paper or voted at that station, or as to the official mark, and no such officer, clerk, or agent, and no person whosoever, shall interfere with or attempt to interfere with a voter when

marking his vote, or otherwise attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted, or communicate at any time to any person any information obtained in a polling station as to the candidate for whom any voter in such station is about to vote or has voted, or as to the number on the back of the ballot paper given to any voter at such station. Every officer, clerk, and agent in attendance at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting, and shall not attempt to ascertain at such counting the number on the back of any ballot paper, or communicate any information obtained at such counting as to the candidate for whom any vote is given in any particular ballot paper. No person shall directly or indirectly induce any voter to display his ballot paper after he shall have marked the same, so as to make known to any person the name of the candidate for or against whom he has so marked his vote.

Every person who acts in contravention of the provisions of this section shall be liable, on summary conviction before two justices of the peace, to imprisonment for any term not exceeding six months, with or without hard labour.

In case any of the above provisions are violated by any person in his polling station the presiding officer should give the person offending into custody, and should immediately take steps to inform the returning officer of the fact.

NOTE.—The stamping instrument is to be kept private, and with the seal given up to the town clerk as soon as practicable after the close of the poll.

### *Close of the Poll.*

We have hitherto confined ourselves almost exclusively to the duties of the mayor, presiding officers and clerks, and the agents of the candidates. In fact the duties of the returning officer during the poll are merely nominal, unless under special circumstances. After the close of the poll all the subsequent proceedings are to be done under the direction of the returning officers. Returning officers should, therefore, be well informed as to their duties, powers and responsibilities.

*Agents to attend at the Polling Stations and at the Counting of the Votes.*

With reference to the appointment by the candidates of agents to attend at the respective polling stations and at the counting of the votes, and the duties and powers of the returning officer in this respect, see p. 221, and sect. 20, sub-sect. 6, and rules 31, 32, 37, 51, 52, 53, in the 1st schedule to the Ballot Act, 1872.

The following form of directions for the guidance of returning officers has been prepared with a view to illustrate in a concise and yet ample manner the duties of returning officers, and a system to be pursued in counting the votes. It is hardly necessary to say that the returning officer is entitled in all matters of difficulty to the advice of the town clerk.

*Directions for the Guidance of Returning Officers.*

The returning officer may preside at any polling station.

It is the duty of the returning officer to institute a prosecution against any person whom he may believe to have been guilty of personation or any offence mentioned in sects. 3 or 4 of the Ballot Act, 1872.

*At the close of the Poll*

The returning officer will receive from each presiding officer,—

1. The ballot box, unopened, with the key attached.
2. The unused and spoilt papers placed together.
3. The tendered ballot papers.
4. The register and the counterfoils of the ballot papers.
5. The “tendered votes list,” and “the list of votes marked by the presiding officer,” accompanied by a statement of the number of voters whose votes have been so marked.
6. A “ballot paper account,” accounting for the number of ballot papers entrusted to the presiding officer.

As each presiding officer arrives with his ballot box and other documents at the appointed place the returning officer should receive the ballot box, the ballot paper account, and the packet of unused ballot papers ; these should be placed at the top of the respective ballot boxes to which they belong, and the remaining documents of each presiding officer should be placed apart, as they will not be required in the counting of the votes. Great care must be taken that none of the packets are lost.

*As to Counting the Votes.*

No other person than the returning officer, his assistants and clerks, the candidates and their agents, except with the permission of the returning officer, may be present, and the returning officer should take steps to see that no other persons are present.

Before proceeding to count the votes the returning officer, his assistants or clerks will, in the presence of the agents, count and record the number of papers in each box, and see that the number is the same as stated in the ballot paper account, and in case of any discrepancy a memorandum should be indorsed to that effect on the back of the ballot paper account. He should then mix the whole of the ballot papers together.

He will keep the papers face upwards, and take every precaution to prevent the printed number on the back of the ballot papers from being seen.

He will, as far as practicable, proceed continuously with the counting, allowing only time for refreshment, and will (except so far as he and the agents otherwise agree) exclude the hours between seven o'clock at night and nine o'clock on the succeeding morning.

During the excluded time the ballot papers and other documents relating to the election are to be placed under the seal of the returning officer and the seals of such of the agents as may desire to affix their seals, and the returning officer will take every precaution for the security of the papers and documents.

The returning officer will decide on the validity of the several ballot papers, and his decision is final, subject to reversal on petition.

The returning officer may reject any ballot paper on any of the following grounds, viz. :—

- (1.) Want of official mark.
- (2.) Voting for more candidates than entitled to.
- (3.) Writing or mark by which voter could be identified.
- (4.) Unmarked or void for uncertainty.

He will indorse any ballot paper which he may reject as invalid with the word “rejected,” and will add to the indorsement “rejection objected to” if any agent object to his decision.

In case of an equality of votes for any candidates the returning officer has a casting vote, notwithstanding that he may not be a duly qualified voter, or that being so qualified he has voted in the election previously.

Upon the completion of the counting he will seal up in separate packets the counted and rejected ballot papers.

He will not open the packets marked “tendered ballot papers,” or “marked copy of register of voters and counterfoil ballot papers.”

He will, in the presence of the agents of the candidates, verify the ballot paper account of each presiding officer, by comparing it with the number of ballot papers recorded as taken out of his box at the commencement of the counting, and the unused and spoilt ballot papers, and the tendered votes list, and will see that the number of ballot papers used, unused, and spoilt, comprises the whole of the ballot papers entrusted to the presiding officer.

He will, on the completion of the examination, re-seal each sealed packet, and see that each packet is indorsed with a description of its contents and the particulars of the election to which it relates.

Lastly, he will report to the town clerk the result of such verification, and the number of ballot papers rejected and not counted by him, under the several heads before mentioned, and deliver such report to him, together with all documents and things connected with the election.

He will, if requested, allow any agents of the candidates to make a copy of such report before it is sent to the town clerk.

The following form of report may be used :—

To the town clerk of the borough of *N.*

I ———, being the returning officer for ——— ward in the borough of *N.* [*or the borough of N.,*] at an election of ——— councillors for the said ward [*or the said borough*] held on the ——— day of ———, 18—.

Report—

That the names of the candidates, and the number of votes recorded for each candidate respectively nominated at the said election were as follows :—

(Here enter the names of the candidates and the number of votes recorded.)

That the number of ordinary ballot papers  
taken out of the ballot boxes was

That the number of tendered ballot papers  
issued was                -                -                -

Total

That ——— ballot papers were rejected by me as invalid under the following heads, namely :—

Want of official mark                -                -

Voting for more candidates than entitled to

Writing or mark by which voter could be  
identified                -                -

Unmarked or void for uncertainty -                -

Total

The returning officer may report any special circumstances connected with the election, and he will hand his report to the town clerk, together with all documents and things connected with the election.

The following system is suggested for the guidance of returning officers in counting the votes :—

The appointment of officers to attend the counting of the votes rests with the mayor, who will exercise his discretion as to the staff required for the purpose. It is hardly necessary to say that the larger the staff the more quickly the result of the election will be ascertained. It seems very desirable that the proceedings should not be protracted any longer than necessary. The mayor will doubtless be guided to a considerable extent as to the number of officers to be appointed by the number of candidates nominated and the vigour with which the election has been carried on.

In an ordinary November election in a borough divided into wards, where two candidates are required and four are nomi-



nated, if the candidates are put forward in pairs, the counting of the votes would be comparatively easy, and doubtless two persons could count 500 ballot papers in an hour. The time occupied would, however, be very much more if each candidate stood on his own merits. In such a case it would be necessary to enumerate each vote as hereinafter mentioned.

The rooms in which the ballot papers are to be counted should be of ample size to accommodate the counting officers and agents and the candidates without any overcrowding.

Tables should be placed in convenient positions in the room, and sufficient space should be allowed between the tables to pass and repass.

The tables should be supplied with pens, ink, and blotting-paper.

The counting officers should work in pairs, and should be placed at the separate tables side by side. Each pair of counting officers should sit at a distance of six feet at the least from any other pair, so that they may not interrupt each other's proceedings. The counting officers being seated at the tables, the returning officer, or his assistant, should give to one in each pair of officers a number of ballot papers. A counting or enumerating sheet, and two ordinary files should be supplied. One file should have attached to it a card with the word "disputed" printed thereon.

One officer should then take the ballot papers one by one and call over the names of the candidates for whom the votes are marked, and the other officer should record the votes on the counting sheet accordingly. As soon as the paper has been thus dealt with, the officer will put it face upwards on the file for undisputed ballot papers.

In case the officer comes to a ballot paper—

- (1.) Not marked with the official mark ; or
- (2.) Upon which more votes are given than a voter is entitled to give ; or
- (3.) Upon which is any writing or mark by which the voter could be identified ; or
- (4.) Which is unmarked, or is uncertain as to the persons

for whom the votes are given, he should put every such ballot paper on the file marked "disputed."

If any agent object to a ballot paper the officer should put it on the file for disputed ballot papers, for the decision of the returning officer.

The returning officer should not upon any pretence whatever allow a candidate or any agent to meddle with the ballot papers or interfere with the counting officers in their duties.

The returning officer should have one officer personally attending on him during the counting. Such officer should have charge of the box containing the whole of the ballot papers, and should see that no person other than the returning officer takes any ballot papers therefrom. He should also have the custody of the counting sheets (a). He should be provided with a register in which should be recorded the name of every person entrusted with a counting sheet, and the number of such sheet. As often as the counting or enumeration sheets are filled up and cast, the counting officer should take the same to the returning officer's assistant, who will receive the same and mark them off in the register as returned, and give out other sheets in their stead, recording the same in the register as before mentioned.

When the counting officer's file is full, or when the votes on his ballot papers are all counted, they (with the exception of the disputed ballot papers) should be delivered to the returning officer's assistant, who should place them in a box separate from the ballot papers which have not been enumerated.

The counting officers should retain the disputed ballot papers until the whole of the undisputed votes have been counted. The officers who have cast the sheets should sign their names at the foot thereof. The casting should be checked by an independent clerk, who should also sign his name at the foot of the counting or enumerating sheet. If any error is detected in casting the sheet, it should be at once taken to the returning

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(a) The counting or enumerating sheets should be numbered consecutively, and the greatest care should be taken that all sheets issued are returned.

officer, who should make such corrections as may be necessary, and place his initials against the alteration.

The returning officer's assistant should be provided with a sheet in the same form as the enumerating sheets with a column on the left hand side in which should be written consecutive numbers. This sheet should be called the "summary of votes recorded." As each counting or enumerating sheet is returned to the returning officer's assistant he should enter on the summary (on the line corresponding in number with the counting or enumerating sheet) the total number of votes recorded for each candidate appearing on each enumerating sheet, and so on until the whole have been recorded. As the totals of each enumerating sheet are transferred to the summary the enumerating sheets should be signed by the returning officer's assistant and then filed. The returning officer should then examine the entries made on the "summary" by his assistant so as to ascertain that the totals of the several enumerating sheets have been correctly transferred to the summary, and should sign the same accordingly.

*As to the Rejection of Invalid Ballot Papers.*

This is a subject with respect to which much is left to the judgment and discretion of the returning officer. Some diversity in practice will necessarily follow, and a returning officer will probably find it desirable, as tending to save himself from interruption in his duties, if he declares, before he begins to examine the ballot papers which have been set aside for his decision, substantially what principle he intends to follow in allowing and disallowing votes.

The provisions of the Ballot Act, 1872, relating to this subject are as follows:—

By section 2 any ballot paper which *has not on its back the official mark (a)*, or on which anything except the prescribed

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(a) It is necessary to read these words as if they merely imported *does not bear the official mark*, because by Rule 34 the returning officer, while counting and recording the number of ballot papers and counting the votes, is required to "keep the ballot papers with their faces upwards, and take precautions for preventing any person from seeing the backs;" and the 4th

number on the back is written or marked by which the voter can be identified, shall be void and not counted.

By section 6 of "The Municipal Elections Act, 1875," which enables one ballot paper to be used at an election of auditors and assessors, distinguishing thereon the names of the candidates so as to show the office for which they are respectively candidates, it is provided that in counting the votes every such ballot paper shall be deemed to be a separate ballot paper in respect of each office, and that any objections thereto shall be considered and dealt with accordingly.

By Rule 36 of the Ballot Act, 1872, as varied by Rule 64, the returning officer is to report to the town clerk the number of ballot papers rejected and not counted by him under the several heads of—

- (1.) Want of official mark.
  - (2.) Voting for more candidates than entitled to.
  - (3.) Writing or mark by which voter could be identified.
  - (4.) Unmarked or void for uncertainty.
- (1.) As to the want of the official mark. If the presiding officers and their assistants do their duty no question will arise for the returning officer under this head. If, however, any ballot papers should be found to lack the official mark, the returning officer will have no alternative but to reject them.
  - (2.) Voting for more candidates than entitled to. Ballot papers disqualified under this head are for the most part obviously bad upon the face of them. It sometimes happens, however, that an ill-informed voter who has made a mistake in marking his votes, instead of obtaining another ballot paper seeks by some means to obliterate his error and afterwards marks his votes correctly. The returning officer must determine whether any additional marks are

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section of the Act provides that every officer, clerk, and agent attending the counting of the votes shall not attempt to ascertain the number on the back of any ballot paper on pain of imprisonment for six months.

merely cancellations of mistakes which in his discretion need not invalidate the ballot paper, or are such marks as would come under the next head, viz :—

(3.) Writing or mark by which voter could be identified.

Before taking this disqualification into particular consideration it is necessary to refer to the following direction contained in the “form of directions for the guidance of the voter in voting” contained in the second schedule to the Ballot Act, namely,—

“The voter will go into one of the compartments and, with the pencil provided in the compartment, place a cross on the right hand side opposite the name of each candidate for whom he votes, thus **X**.”

Section 28 of the Ballot Act, 1872, enacts that the schedules to this Act and the notes thereto and directions therein shall be construed and have effect as part of this Act.

The Act itself contained no provision as to how, when, or where the voter is to mark his vote, but merely provides that the voter having secretly marked his vote on the paper and folded it up, so as to conceal his vote, shall place the ballot paper in the ballot box.

Rule 25 (in the first schedule) prescribes the when and where, but is equally silent as to the manner in which the voter is to mark his vote. It provides that “the elector on receiving the ballot paper shall forthwith proceed into one of the compartments in the polling station and there mark his paper, and fold it up so as to conceal his vote, and shall then put his paper so folded up into the ballot box.”

These provisions are supplemented by the directions for the guidance of voters which supplies the following particulars as to the mode of marking the vote.

- (a.) The vote is to be marked with the pencil provided in the marking compartment.
- (b.) The mark to be made by the voter is to be a cross.
- (c.) Such mark is to be made on the right hand side opposite the name of the candidate voted for.

The force of these directions has been variously estimated.

By some they have been held, on the strength of section 28 of the Ballot Act, to be obligatory, and that if the mark made by the voter be something other than a cross, or be made elsewhere than on the right hand side, the vote is bad and ought to be rejected. Others hold them to be merely directory, and that a mark other than a cross, or a mark made elsewhere than on the right hand side, does not of itself necessarily invalidate a ballot paper. In a recent decision the Court of Common Pleas decided that the rules in the first schedule, and the forms in the second schedule, to the Ballot Act, are directory only (a).

It is clear, however, that if any such marking amounts to a mark by which the voter could be identified the vote will be bad.

It is equally clear that if such marking does not amount to a mark by which the voter could be identified the vote will be good, for there is no other prescribed ground on which to reject it.

The question will then arise in each case whether any particular departure from the mode of marking indicated by the directions amounts to "writing or mark by which voter could be identified."

The identification of a voter for lawful purposes is provided for by his number on the register being written upon the counterfoil of his ballot paper, and the ballot papers and the counterfoil being numbered alike. For the improper identification of a number of voters by the agent of a candidate attending the counting of the votes it would be possible to provide by some pre-arrangement for a peculiar marking of their votes. Thus, if some person bribes ten voters to vote for A. B., and makes it a condition of their receiving their bribes that the agents on behalf of A. B. present at the counting shall observe that ten of the votes given for A. B. are marked with some pencil different from those provided, or with some mark other than a cross, or with a mark made otherwise than on the right hand side, an evasion of the intention of the law is effected, and such marking of the votes is to some extent a mark by which a voter could be identified.

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(a) *Woodward v. Sarsons and Sadler*, XXXII L. T. R. (N.S.) C. P. 867.

The returning officer must determine whether the divergencies from the prescribed mode of marking the ballot papers brought under his notice afford, when taken as a whole, any evidence of collusion for the purpose of an improper identification more or less complete. If he is of opinion that they do he may reject such papers as he deems to afford such evidence. If, however, he is of opinion that the irregularities in marking are innocent and result only from want of knowledge or inadvertence he will doubtless endeavour, so far as he can, to give effect to what appears to be the intention of the voters.

In the case of *Woodward v. Sarsons and Sadler*, cited above, the following points were decided.

That a ballot paper is not vitiated by not having a cross placed thereon in strict conformity with the directions in the schedule to the Ballot Act, so long as there is some mark that clearly shows for whom the voter intended to vote and by which he cannot be identified.

That placing more crosses than one opposite a candidate's name, or placing the cross on a candidate's name, or on the left hand side thereof, will not invalidate the ballot paper.

That the writing of the candidate or the voter's name would render the ballot paper void. That, however, if such departure from the prescribed method of marking the ballot paper should have been made with a view to identify the voter, then the papers upon proof being given should be rejected by the returning officer.

It is suggested that this decision allows the utmost latitude which should be conceded to voters in marking their ballot papers.

It would be difficult for the returning officer to obtain proof that irregularities in marking ballot papers are the result of collusion for the purpose of identification, although his suspicions may be aroused by a series of similar irregularities.

(4) As to ballot papers rejected as unmarked or void for uncertainty.

These present little or no difficulty. Few papers will be found wholly unmarked. Some of those that appear to be unmarked might probably be found to be marked on the back,

and some will have marks placed so equally between the names of candidates that it is impossible to tell for whom they were meant to be given.

These must necessarily be rejected altogether. If, however, a ballot paper is uncertain as to one or more and certain as to another or others, the returning officer will count the votes which are certain.

When the returning officer has gone through all the disputed ballot papers, he will enumerate the votes on such of them as he may not have rejected, and will deal with the rejected ballot papers in the manner fully described in the directions for the guidance of returning officers. Upon the completion of the counting the returning officer will forthwith declare to be elected the candidates to whom the majority of votes have been given, and return their names to the town clerk: see sec. 2, and Rule 64, 35 & 36 Vict., c. 33, s. 2.

The following form may be used :—

Borough of ———

Election of ——— councillors for ——— ward in the said borough (or the said borough).

I, the undersigned ——— the returning officer at the election of ——— councillors for the said borough, by the burgesses of ( ——— ward aforesaid) or (the said borough) held this ——— day of ——— 18 , do hereby publish that the number of votes recorded for each candidate at the said election is as follows :—

Names of Candidates.	Number of votes recorded.

And I do hereby declare that the said ——— and the said ——— are duly elected councillors of the said borough.

Dated this ——— day of ——— 18 .

Mayor (or Alderman), returning officer.



ON THE PRACTICE OF ELECTING THE ALDERMEN BEFORE  
WHOM THE ELECTIONS OF COUNCILLORS IN BOROUGH  
DIVIDED INTO WARDS ARE TO BE HELD UNDER 5 & 6  
WILL. 4, c. 76, s. 43.

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The Corrupt Practices (Municipal Elections) Act, 1872, has given facilities for testing the validity of municipal elections, and its already extensive application renders it necessary that great care should be exercised in appointing the returning officers at municipal elections.

The 5 & 6 Will. 4, c. 76, s. 43, *inter alia*, provides as follows: "and every such ward election first after such division into wards of any such borough shall be held before the mayor or the person whom the mayor for the time being shall appoint in that behalf, and in every succeeding year shall be held before the alderman whom the councillors chosen in such ward shall yearly appoint in that behalf."

The act to be done here is in the nature of a corporate act of selection, and therefore an election by the majority of the councillors for the ward, present at a meeting duly convened, would be valid (a). If this were not the case it might happen that the concurrence of all in the appointment of one person could never be obtained. One or more of the councillors might be prevented by illness or absence abroad from acting. At such meeting there must be present a majority of the councillors for the ward; but the election of an alderman may be made by the majority of the councillors present at such meeting, although such majority may be a minority of the councillors for a particular ward. Wherever a corporate act is to be done by a definite and not an indefinite portion of the body a

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(a) Comyn's Digest, tit. *Franchises*, F. 20, *Head Corporations*; *Rex v. Bellringer*, 4 T. R. 810, and *Rex v. Farls*, Cowp. 248.

majority of that definite portion must be present and act (a). In a case where there are six councillors in each ward to constitute a meeting there must be four present, and three would only constitute an equality, and the meeting must be adjourned.

The town clerk should summon the whole of the councillors for the respective wards to attend a meeting on the day of the November meeting of the council, a short time before the ordinary meeting, for the purpose of appointing the alderman before whom the election of councillors in the respective wards shall be held.

Such summons may be as follows:—

Municipal Offices, 187 .

Mr. ———

You are hereby summoned to attend at the town hall on ——— next, at ——— o'clock in the forenoon, a meeting of the councillors of the borough of ——— chosen for ——— ward, to appoint the alderman before whom the elections of councillors by the burgesses of such ward shall be held during the ensuing year. It is necessary that you should attend and record your vote, as no election can take place in the absence of a majority of the councillors for the ward.

A. B.

*Town Clerk.*

The proceedings at the meeting of the councillors should be recorded, and such record may be in the following form—

Borough of ——— <i>to wit.</i>	}	At a meeting of the councillors chosen in the several wards of the said borough held at the town hall on ——— the ——— day of ———, 187 , at half-past nine o'clock in the forenoon (pursuant to notice) to appoint the aldermen before whom the elections of councillors by the burgesses of the said wards respectively are to be held until the next yearly appointment.
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The councillors now present appoint the aldermen respectively hereinafter as to each ward named before whom the elections of councillors by the burgesses of the said respective wards are to be held until the next yearly appointment namely,—

For ——— ward

Alderman A.

And so on for the remainder of the wards.

It may be convenient for the sake of proof to have the record

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(a) *Rex v. Varls, supra; Rex v. May*, 4 B. & Ad. 843.

signed by the councillors present, but it is not necessary to the validity of the appointment.

Each ward is distinct, and the decision of the councillors for their respective wards only is required. No mode of giving that decision is prescribed, and it may be by verbal resolution.

The record by the town clerk is not essential, but it is a convenient mode of perpetuating the resolution of the meeting. Perhaps the appointment need not be made at such a meeting, but certainly it would not be prudent to make it in any other way.

A *mandamus* would lie to the councillors of any ward to meet and elect an alderman to fulfil this office. This is a duty prescribed by the statute.

In the case of the illness, or incapacity to act of an alderman, the mayor is empowered to appoint another alderman to act (*b*).

The form of such appointment may be as follows :—

Borough of *N*.                      ——— Ward.

Election of ——— councillors for the borough of *N*. by the burgesses of ——— ward in the said borough to be held on ——— the ——— day of ——— 18 .

I ———, mayor of the said borough, in exercise of the power in that behalf vested in me by 7 Will. 4 & 1 Vict. c. 78, s. 16, do hereby appoint Mr. ——— an alderman of this borough to act at the said election in the room of Mr. ——— the alderman appointed for the above purpose by the councillors of the said ward, who is incapacitated from acting by illness.

Dated this ——— day of ——— 18 .

*Mayor.*

Borough of *N*.                      ——— Ward.

Election of ——— councillors for the borough of *N*. by the burgesses of ——— ward in the said borough, to be held on the ——— day of ——— 18 .

I ———, mayor of the said borough (in which said borough the number of aldermen does not exceed the number of wards), in exercise of the power

(*b*) Or councillor where the number of aldermen does not exceed the number of wards, but no such councillor may be appointed who is a Burgess of the ward : 7 Will. 4 & 1 Vict. c. 78, s. 16, and 17 Vict. c. 79, s. 10.

in that behalf vested in me by 16 & 17 Vict. c. 79, s. 10, do hereby appoint Mr. ——— a councillor of the said borough (not being a councillor representing or enrolled on the burgess list for the said ward) to preside at the said election in the room of Mr. ——— the alderman appointed for the above purpose by the councillors of the said ward, who is incapacitated from acting by illness.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 18 .

*Mayor.*

# APPENDIX.

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## PART I.

2 & 3 WILL. 4, CAP. LXIX.

An Act to prevent the Application of Corporate Property to the Purposes of Election of Members to serve in Parliament.

[1st August, 1832.]

*Monies or personal property belonging to municipal corporations not to be applied in or towards parliamentary elections; and all bonds, &c., for securing the same void.*] Whereas the property belonging to cities, towns, Cinque Ports, and boroughs corporate in the United Kingdom of Great Britain and Ireland may be wasted and dissipated by the application thereof in or towards the expenses attendant upon parliamentary elections, to the great detriment of such municipal corporations; and it is expedient to make provision to prevent such detriment, and also to ensure the freedom of election by restraining the application of corporate property before mentioned: be it therefore enacted, &c., that from and after the passing of this Act it shall not be lawful for any municipal corporation as aforesaid, or any court guild, council, or assembly constituting or composed of the ruling or governing part or class thereof, or any corporate officer, trustee, or other person acting on behalf of such corporation or any part thereof, to pay, transfer, give, bestow, or apply any sum or sums of money, or any parliamentary or other stocks, funds, or securities for money, or any personal chattel belonging to or vested in the same corporation or any part thereof, or in any individual in trust for or for the benefit of such corporation, in satisfaction, compensation, or discharge of any expenses incident to or incurred or occasioned by the election of a member to serve in the Commons House of Parliament, or by any person offering himself as a candidate at or previous to a parliamentary election; and that all bonds, covenants, recognizances, or judgments given, executed, or suffered by any such corporation, or any part or class thereof, or by any corporate officer, trustee, or other person, in the name or on the behalf of such corporation, for the purpose of securing the payment of such expenses, shall be utterly void.

II. *Payments, &c., made for the purpose of inducing any person to exert himself in elections at a future time to be considered as within this Act.*] And be it further enacted, that any gifts, transfers, payments, or gratuities,

bonds, covenants, recognizances, or judgments, made, paid, given, executed, or suffered by any corporation, part of a corporation, or corporate officer, or trustee, or other person as aforesaid, for the purpose of inducing or influencing any person or persons to labour in parliamentary elections at a future time, or to pay, satisfy, or incur any such expenses as aforesaid at a future time, shall be deemed to be payments, transfers, applications, and securities forbidden and declared to be void by this Act, although the same may be ostensibly and colourably made, paid, given, executed, or suffered for any other cause or consideration.

III. *All dispositions of real property for the purpose of satisfying or securing any expenses hereby prohibited, to be void.*] And be it further enacted, that all conveyances, mortgages, leases, or other assurances or dispositions of lands, tenements, or hereditaments, belonging to or vested in or held in trust for any municipal corporation, made or executed for the purpose of securing, satisfying, or compensating any expenses, debts, payments, or disbursements, liabilities or engagements, incurred or to be incurred by the same corporation, or any part or class thereof, or any member, officer, or trustee thereof, or by any other person on behalf of such corporation, contrary to the true intent and meaning of this Act, and all estates, charges, and incumbrances thereby created, shall be utterly void.

IV. *All votes and other proceedings contrary to this Act to be void.*] And be it further enacted, that all votes, orders, or resolutions, acts, by-laws, or other proceedings made, passed, or adopted by any municipal corporation, or any part or class thereof, or any member or members thereof, for the purpose of directing or authorizing, or pretending to direct or authorize any payment, matter, or thing forbidden by this Act, or for the purpose of evading the provisions hereby enacted, shall be utterly void.

V. *Corporate officers or others making any payment contrary to this Act to make good the amount or value so misapplied.*] And be it further enacted, that any corporate officer, trustee, or other person who shall make or concur in making any payment, transfer, or application of corporation money, stocks, funds, or securities, or personal chattel, as aforesaid, contrary to the true intent and meaning of this Act, shall be deemed and taken to have made the same in his own wrong, and that he shall be individually liable to repay, satisfy, and make good the amount or value thereof to the same corporation, notwithstanding any release or pretended indemnity which may be given to him in the name of the same corporation or any part or class thereof, or by any person or persons on behalf of such corporation.

VI. *Corporators empowered to bring actions or suits in the name of the corporation.*] And in order to frustrate any fraudulent connivance or concealment, be it enacted, that it shall and may be lawful for any two or more freemen, burgesses, or corporators of such municipal corporation to commence, bring, and prosecute any action or suit at law or in equity, in the name of the same corporation, against any officer, trustee, or other person who may have made such illegal payment, transfer, or application as above-mentioned, in the same manner, to all intents and purposes, as if they, their executors and administrators, were jointly and severally appointed the irrevocable attorneys of such corporation for that purpose: provided nevertheless, that before the defendant in such action or

suit shall be required to plead or answer, the plaintiffs shall give reasonable security for payment of costs, in case any shall become due from them, by the event of the action or suit, in such manner as the court in which the same shall be brought may direct; such costs to be taxed as between attorney and client.

VII. *Members of corporations offending against this Act guilty of a misdemeanor.*] And be it further enacted, that any member of a municipal corporation who shall authorize, direct, or command any payment, transfer, or application hereby forbidden, or who shall assent to or concur or participate in any affirmative vote, order, or proceeding relating thereto, or shall sign or seal in his individual capacity or affix the corporate seal to any deed or instrument hereby declared void, shall be guilty of a misdemeanor, and, being thereof legally convicted in His Majesty's Court of King's Bench at Westminster, shall in addition to such punishment as the court may award, be for ever disabled to take, hold, or exercise any office in the same corporation.

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#### 4 & 5 WILL. 4, CAP. XXVII.

An Act for the better Administration of Justice in certain Boroughs and Franchises. [25th July, 1834.]

*Justices of the peace acting for boroughs may commit persons for felonies triable at sessions.*] Whereas the justices of the peace acting in and for certain boroughs and franchises in that part of the United Kingdom called England, not being empowered by charter or otherwise to hear and determine felonies at the general sessions of the peace held in and for such boroughs and franchises, are by law required to send for trial at the general assizes for the county wherein such borough or franchise may be situated every person charged with felony, whereby the administration of justice is injuriously delayed, and the expenses to which the county in such cases is liable are grievously increased: be it therefore enacted, &c., that from and after the passing of this Act the justices of peace, and any such justice acting in and for any borough or franchise in that part of the United Kingdom called England, not being empowered by charter or otherwise to hear and determine felonies, shall and may commit every person charged with any such felony as the court of quarter sessions may have jurisdiction to try, to be tried at the general quarter sessions of the peace for the county, riding, or division wherein such borough or franchise shall be situate, or at any adjournment thereof; and the justices of the peace acting in and for such county, riding, or division are hereby empowered to try persons so committed at the general quarter sessions of the peace held for such county, riding, or division, or at any adjournment thereof.

II. *Justices in boroughs, &c., having jurisdiction at sessions over certain felonies may commit to the gaol of the county any person charged with a felony the trial of which may legally take place at the quarter sessions, but to which the jurisdiction of the borough justices does not extend.*] And whereas the justices of the peace acting in and for certain boroughs and

franchises in that part of the said United Kingdom called England have jurisdiction at the general sessions of the peace held in and for such borough or franchise, to hear and determine divers felonies, and it is expedient that any such justice or justices should have power in certain cases to commit for trial at the general quarter sessions of the peace for the county, riding, division, or shire in which such borough or franchise may be situate, any person charged with felony which the said justices are not authorized or empowered to hear and determine at the general sessions of the peace held in and for such borough or franchise; be it therefore enacted, that from and after the passing of this Act it shall and may be lawful to and for a justice or for justices of the peace acting in any of the said last-mentioned boroughs or franchises to commit to the gaol of the county, riding, division, or shire, in which such borough or franchise may be situate, to be tried at the general quarter sessions of the peace in and for such county, riding, division, or shire, any person charged with a felony which the said court of quarter sessions may have jurisdiction to try, and to the trial of which the jurisdiction of the justices of such borough or franchise at the general sessions of the peace in and for such borough or franchise does not extend; and the justices of the peace acting in and for such last-mentioned county, riding, division, or shire are hereby authorized and empowered to try any such person so committed as last aforesaid at the general quarter sessions of the peace held in and for such county, riding, division, or shire.

III. *In places having a recorder and a fit prison, the magistrates shall commit to such; and the quarter sessions of such places shall have authority to punish offenders.*] And be it further enacted, that in all such towns or franchises which have a recorder and a prison fit for the confinement of prisoners the magistrates of such town or franchise shall commit to the prison of such town all persons charged with having committed within such town or franchise any felony or misdemeanor which might if the same had been committed out of such town or franchise and within the body of any county have been tried by the justices of quarter sessions of such county; and the court of quarter sessions of such town or franchise shall have the same authority to inquire of, hear, determine, and punish any persons charged with such felonies or misdemeanors as the courts of quarter sessions of counties have; which quarter sessions the justices of such town or franchise are hereby required to hold.

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#### 5 & 6 WILL. 4, CAP. LXXVI.

An Act to provide for the Regulation of Municipal Corporations in England and Wales.  
[9th September, 1835.]

*Repeal of all Acts, charters, and customs, inconsistent with this Act.*] Whereas divers bodies corporate at sundry times have been constituted within the cities, towns, and boroughs of England and Wales, to the intent that the same might for ever be and remain well and quietly governed;



and it is expedient that the charters by which the said bodies corporate are constituted should be altered in the manner hereinafter mentioned: be it therefore enacted, &c., that so much of all laws, statutes, and usages, and so much of all royal and other charters, grants and letters patent now in force relating to the several boroughs named in the schedules (A.) and (B.) to this Act annexed, or to the inhabitants thereof, or to the several bodies or reputed bodies corporate named in the said schedules, or any of them, as are inconsistent with or contrary to the provisions of this Act, shall be and the same are hereby repealed and annulled.

II. *Reservation of all rights of property, and beneficial exemptions to freemen, their wives and children.*] And whereas in divers cities, towns, and boroughs the common lands and public stock of such cities, towns, and boroughs, and the rents and profits thereof have been held and applied for the particular benefit of the citizens, freemen, and burgesses of the said cities, towns, and boroughs respectively, or of certain of them, or of the widows or kindred of them, or certain of them, and have not been applied to public purposes: be it therefore enacted that every person who now is or hereafter may be an inhabitant of any borough, and also every person who has been admitted or who might hereafter have been admitted a freeman or burgess of any borough if this Act had not been passed, or who now is or hereafter may be the wife or widow or son or daughter of any freeman or burgess, or who may have espoused, or may hereafter espouse the daughter or widow of any freeman or burgess, or who has been or may hereafter be bound an apprentice, shall have and enjoy and be entitled to acquire and enjoy the same share and benefit of the lands, tenements, and hereditaments, and of the rents and profits thereof, and of the common lands and public stock of any borough or body corporate, and of any lands, tenements, and hereditaments, and any sum or sums of money, chattels, securities for money, or other personal estate, of which any person or any body corporate may be seised or possessed in whole or in part for any charitable uses or trusts, as fully and effectually, and for such time and in such manner, as he or she by any statute, charter, bye-law, or custom in force at the time of passing this Act might or could have had, acquired, or enjoyed in case this Act had not been passed: provided always, that the total amount to be divided amongst the persons whose rights are herein reserved in this behalf shall not exceed the surplus which shall remain after payment of the interest of all lawful debts chargeable upon the real or personal estate out of which the sums so to be divided have arisen, together with the salaries of municipal officers, and all other lawful expenses which on the fifth day of June (a) were defrayed out of or chargeable upon the same: provided also, that nothing hereinbefore contained shall be construed to apply to any claim, right, or title of any burgesses or freemen, or of any person, to any discharge or exemption from any tolls or dues levied wholly or in part by or to the use or benefit of any borough or body corporate; and that after the passing of this Act no person shall have or be entitled to claim thenceforward any discharge or exemption from any tolls or dues lawfully levied in whole or in part by or to the use of any body corporate, except as hereinafter is excepted: provided nevertheless, that every person who, on the fifth day of June in this present year was an inhabitant, or

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(a) The words "in this present year" have been accidentally omitted.

was, or was entitled to be admitted a freeman or burgess of any borough, or who on the said fifth day of June was the wife or widow, son or daughter of any freeman or burgess of any borough, or who on the said fifth day of June was bound an apprentice, shall be entitled to have or acquire and enjoy the same discharge or exemption from any tolls or dues lawfully levied in whole or in part by or to the use of any borough or body corporate as fully and for such time and in such sort as he or she by any statute, charter, bye-law, or custom in force on the said fifth day of June might or would have had, acquired, and enjoyed the same as if this Act had not been passed, and no further or otherwise: provided also, that where by any statute, charter, bye-law, or custom in force within any borough at the time of passing this Act, any person whose rights in this behalf are herein reserved would have been liable in case this Act had not been passed to pay any fine, fee, or sum of money to any body corporate, or to any member, officer or servant of any body corporate, in consideration of his freedom, or of his or her title to such rights as are herein reserved, no such person shall be entitled to have or claim any share or benefit in respect of the rights herein reserved as aforesaid until he or she shall have paid the full amount of such fine, fee, or sum of money to the treasurer of such borough, appointed under the provisions of this Act, on account of the borough fund hereinafter mentioned: provided also, that nothing in this Act contained shall be construed to entitle any person to any share or benefit of the rights herein reserved who shall not have first fulfilled every condition which, if this Act had not passed, would have been a condition precedent to his or her being entitled to the benefit of such rights, so far as the same is capable of being fulfilled according to the provisions of this Act, or to strengthen, confirm, or affect any claim, right, or title of any burgesses or freemen of any borough or body corporate, or of any person to the benefit of any such rights as are hereinbefore reserved, but the same in every case may be brought in question, impeached, and set aside in like manner as if this Act had not been passed.

III. *No freedom to be acquired by gift or purchase.*] Provided always, and be it enacted, that from and after the passing of this Act no person shall be elected, made, or admitted a burgess or freeman of any borough by gift or purchase.

IV. *Reservation of the parliamentary franchise to freemen.*] And whereas the right of voting in the election of members to serve in parliament was by an Act passed in the second year of the reign of His present Majesty, intituled *An Act to amend the representation of the people of England and Wales* (a) preserved to all persons who then were or thereafter might become freemen or burgesses of any city or borough, subject to the conditions and provisions in that Act contained; be it therefore enacted, that every person who if this Act had not been passed would have enjoyed, as a burgess or freeman, or might hereafter have acquired, in respect of birth or servitude, as a burgess or freeman, the right of voting in the election of a member or members to serve in parliament for any city or borough, shall be entitled to enjoy or acquire such right of voting as fully as if this Act had not been passed; and the town clerk of every city or borough returning a member or members to parliament shall at all times

hereafter do and perform all things appertaining to the due registration of the freemen or burgesses of such city or borough according to the provisions of the said Act.

V. *Freemen's roll to be made out and kept by the town clerk.*] And be it enacted that the town clerk of every borough shall on or before the first day of December next make out a list, to be called "The Freemen's Roll" of all persons who at the time of the passing of this Act shall have been admitted as burgesses or freemen of such borough; and that whenever any person shall hereafter become entitled to be admitted a burgess or freeman for the purposes aforesaid of such borough in respect of birth, servitude, or marriage, and shall claim to be admitted accordingly, the mayor of such borough shall examine into such claim, and upon such claim being established every such person shall thereupon be admitted and enrolled by the town clerk of such borough upon the freemen's roll; and the town clerk shall keep a true copy of such roll, to be perused by any person without payment of any fee at all reasonable times, and shall deliver a copy thereof to any person requiring the same, on payment of a reasonable price for such copy.

VI. *Corporations to be styled mayor, aldermen, and burgesses.*] And be it enacted, that after the first election of councillors under this Act in any borough the body or reputed body corporate named in the said schedules in connexion with such borough shall take and bear the name of the mayor, aldermen, and burgesses of such borough, and by that name shall have perpetual succession, and shall be capable in law, by the council hereinafter mentioned of such borough, to do and suffer all Acts which now lawfully they and their successors respectively may do and suffer by any name or title of incorporation; and the mayor of each of the said boroughs shall be capable in law to do and suffer all acts which the chief officer of such borough may now lawfully do and suffer, so far as the same respectively are not altered or annulled by the provisions of this Act.

VII. *Boundaries of certain boroughs to be those settled by 2 & 3 Will. 4, c. 64.—Boundaries of other boroughs to remain until altered by parliament.*] And be it enacted, that after the passing of this Act the metes and bounds of the several boroughs named in the first section of the said schedules (A.) and (B.) for the purposes of this Act shall be the same as the limits thereof respectively settled and described in an Act passed in the second and third year of the reign of his present Majesty, intituled *An Act to settle and describe the divisions of counties and the limits of cities and boroughs in England and Wales so far as respects the election of members to serve in parliament*; and the metes and bounds of the several boroughs named in the second section of the said schedules for the purposes of this Act shall be and remain as the same are now taken to be, until such time as parliament shall otherwise direct: provided nevertheless, that notwithstanding anything herein contained no parish or place, or part of any parish or place, which is detached from the main part of such borough or county of a city or town corporate, shall after the passing of this Act be included within any such borough or county (a).

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(a) A further proviso in this section is repealed by 6 & 7 Will. 4, c. 103, s. 1, *post*.

VIII. *Every place included within the bounds of a borough to be part of such borough.—Parts cut off from the borough to be declared part of adjoining county.*] And be it enacted, that every place and precinct which shall be included within the metes and bounds of any borough as hereinbefore provided, and none other, shall be part of such borough, and in those boroughs which are counties of themselves shall be part of such county and of none other; and in every case in which the metes and bounds of any borough or county under the provisions of this Act shall not include any place or precinct which before the passing of this Act was part of such borough or county, such place or precinct shall thenceforward be taken to be part of the county wherein such place or precinct is situated, or with which it has the longest common boundary: provided nevertheless, that if any such place or precinct shall have been liable before the passing of this Act to contribute to any rate made for the purpose of satisfying any lawful debt to which the ratepayers of such borough or county were liable to contribute before the passing of this Act, and in case any difference shall arise concerning the proportion of such debt as ought therefore to be paid and contributed in respect of such place or precinct, it shall be lawful for the senior justice of assize for the county of which such place or precinct shall thenceforward be taken to be part, on his circuit, on the application of the council of such borough, or of the chairman of a public meeting of the ratepayers of such place or precinct, to appoint, by writing under his hand, a barrister not having any interest in the question to arbitrate between the parties, and by his award under his hand and seal to assess the proportion, if any, of such debts as ought therefore to be paid and contributed in respect of such place or precinct; and such arbitrator shall also assess the costs of the arbitration, and shall direct by whom and in what proportion and out of what fund, the same shall be paid; and such rate as aforesaid shall continue to be levied by warrant of the council of such borough, and paid by such place or precinct, as if this Act had not passed, until such proportion shall have been fully paid and satisfied to the treasurer of the borough, and no longer: provided nevertheless, that every county gaol, house of correction, or lunatic asylum, court of justice, or judge's lodging, which at the time of the passing of this Act is taken to be for any purpose within any county, shall still for all such purposes, be taken to be within such county, anything herein contained to the contrary notwithstanding.

IX. *Occupiers of houses and shops rated for three years to the relief of the poor entitled to be burgesses if resident householders within seven miles (a).—Aliens and persons who have received parochial relief not to be enrolled (b).*

X. *Medical assistance or instruction in endowed schools not to be a cause of disqualification (c).*] And be it enacted that no medical or surgical assistance given by the charitable trustees of any borough shall be taken to be such charitable allowance as shall disqualify any person from being enrolled a burgess as aforesaid; nor shall any person be so disqualified by

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(a) Repealed—32 & 33 Vict. c. 55, s. 1, *post*.

(b) Repealed and re-enacted. *Id.*

(c) See *Id.*

reason that any child of such person shall have been admitted and taught within any public or endowed school.

XI. *Occupiers may claim to be rated.*] And be it enacted, that in every borough it shall be lawful for any person occupying any house, warehouse, counting-house, or shop to claim to be rated to the relief of the poor in respect of such premises, whether the landlord shall or shall not be liable to be rated to the relief of the poor in respect thereof; and upon such occupier so claiming, and actually paying or tendering the full amount of the last made rate then payable in respect of such premises, the overseers of the parish in which such premises are situate are hereby required to put the name of such occupier upon the rate for the time being; and in case such overseer shall neglect or refuse so to do such occupier shall nevertheless, for the purposes of this Act be deemed to have been rated to the relief of the poor in respect of such premises from the period at which the rate shall have been made in respect of which he shall have so claimed to be rated as aforesaid (*d*).

XII. *In case of titles by descent, &c., how the occupation is to be reckoned.*] And be it enacted, that where any house, warehouse, counting-house, or shop in any borough shall come to any person by descent, marriage, marriage settlement, devise, or promotion to any benefice or office, such person shall be entitled to reckon the occupancy and rating, in respect of the occupancy thereof by the person from or by whom such house, warehouse, counting-house, or shop shall have so come to him, as his own occupancy and rating conjointly with the time during which he shall have since occupied and been rated for the same, and shall be entitled to be enrolled a burgess in respect of such successive occupancy and rating, provided he shall be otherwise qualified as herein provided.

XIII. *No new burgesses to be admitted who are not qualified under this Act.*] And be it enacted, that after the passing of this Act no person shall be enrolled a burgess of any borough for the purpose of enjoying the rights conferred for the first time by this Act, in respect of any title other than by occupancy and payment of rates within such borough, according to the meaning and provisions of this Act.

XIV. *Exclusive rights of trading abolished.*] And whereas in divers cities, towns, and boroughs, a certain custom hath prevailed, and certain bye-laws have been made, that no person not being free of a city, town, or borough, or of certain guilds, mysteries, or trading companies within the same, or some or one of them, shall keep any shop or place for putting to show or sale any or certain wares or merchandise by way of retail or otherwise, or use any or certain trades, occupations, mysteries, or handicrafts for hire, gain or sale within the same: be it enacted, that, notwithstanding any such custom or bye-law, every person in any borough may keep any shop for the sale of all lawful wares and merchandises by wholesale or retail, and use every lawful trade, occupation, mystery, and handicraft, for hire, gain, sale, or otherwise, within any borough.

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(*d*) The remainder of this section is repealed by the Statute Law Revision Act 1874 (37 & 38 Vict. c. 35).

XV. *Overseers to make lists of all persons entitled to be burgesses in their respective parishes.*] And be it enacted, that on the fifth day of September in every year the overseers of the poor of every parish wholly or in part within any borough shall make out an alphabetical list, to be called "The Burgess List," according to the form number 1 in the schedule (D.) to this Act annexed, of all persons who shall be entitled to be enrolled in the burgess roll of that year, according to the provisions of this Act, in respect of property within such parish; and the overseers shall sign such burgess lists, and shall deliver the same to the town clerk of the borough on the said fifth day of September in every year, and shall keep a true copy of such lists, to be perused by any person, without payment of any fee, at all reasonable hours between the fifth and fifteenth days of September in every year, and the town clerk shall forthwith cause copies to be printed of all overseer's lists delivered to him, and shall deliver a copy of all such lists to any person requiring the same, on payment of a reasonable price for each copy, and shall cause a copy of all such lists to be fixed on or near the outer door of the town hall, or in some public and conspicuous situation within the borough, on every day during the week next preceding the fifteenth day of September in every year.

XVI. *As to boroughs in which there is no town clerk.—As to precincts, &c., where there are no overseers.*] Provided always and be it enacted, that in any borough in which there shall be no town clerk, or in which the town clerk shall be dead or incapable of acting, all matters by this Act required to be done by and with regard to the town clerk shall be done by and with regard to the person executing duties in such borough similar to those of town clerk, and if there be no such person, or if such person shall be dead or incapable of acting, then by and with regard to such fit person as the mayor of such borough shall appoint in that behalf: provided always, that every precinct or place, whether extra-parochial or otherwise, which shall have no overseers, shall, for the purpose of making out such lists as aforesaid, be deemed within the parish adjoining thereto, such parish being wholly or in part situate within the same borough as such precinct or place, and if such precinct or place shall adjoin two or more parishes so situate as aforesaid it shall be deemed to be within the least populous of such parishes according to the last census for the time being; and the overseers of the poor of every such parish shall insert in the list for their parish the names of all persons who would have been entitled to be inserted in the lists for such precinct or place if such precinct or place had had overseers or been rated to the maintenance of the poor.

XVII. *Persons omitted from the overseers' lists to give notice to the town clerk.—Notices as to persons not entitled to be retained in the lists.—Lists of claimants and of persons objected to, to be published, &c.*] And be it enacted, that every person whose name shall have been omitted in any such burgess list and who shall claim to have his name inserted therein, shall, on or before the fifteenth day of September in every year, give notice thereof to the town clerk in writing, according to the form number 2 in the said schedule (D.) or to the like effect; and every person whose name shall have been inserted in any burgess list for any borough may object to any other person as not being entitled to have his name retained in the burgess list for the same borough, and every person so objecting shall, on or before the fifteenth day of September in every year,

give to the town clerk of such borough, and also give to the person objected to, or leave at the premises for which he shall appear to be rated in the burgess list, notice thereof in writing according to the form number 3 in the said schedule (D.), or to the like effect; and every town clerk shall include the names of all persons so claiming to be inserted on the burgess list, in a list according to the form number 8 in the said schedule (D.), and shall include the names of all persons so objected to as not entitled to be retained on the burgess list, in a list according to the form number 5 in the said schedule (D.), and shall cause copies of such several lists to be fixed on or near the outer door of the town hall or in some public or conspicuous situation within such borough during the eight days next preceding the first day of October in every year; and the town clerk shall likewise keep a copy of the names of all persons so claiming as aforesaid, and also a copy of the names of all persons so objected to as aforesaid, to be perused by any person without payment of any fee, at all reasonable hours during the eight days, Sunday excepted, next preceding the first day of October in every year, and shall deliver a copy of each of such lists to any person requiring the same, on payment of a sum not exceeding one shilling for each copy.

XVIII. *Mayor and assessors to revise lists, and, upon due proof, to insert and expunge names.*] And be it enacted, that the mayor and the two assessors hereinafter mentioned, to be chosen in every year by the burgesses of every borough, shall hold an open court within such borough, for the purpose of revising the said burgess lists at some time between the first day of October inclusive and the fifteenth day of October inclusive in the year one thousand eight hundred and thirty-six, and every succeeding year, having first given three clear days' notice of the holding of such court, to be fixed on or near the outer door of the town hall or in some public or conspicuous situation within the borough; and the town clerk of every such borough shall, at the opening of the court, produce the said lists and a copy of the lists of the persons claiming and of the persons objected to, so made out as aforesaid; and the overseers, vestry clerks, and collectors of poor's rates of every parish wholly or in part within every such borough shall attend the court, and shall answer upon oath all such questions as the court may put to them or any of them touching any matter necessary for revising the burgess lists; and the mayor shall insert in such lists the name of every person who shall be proved, to the satisfaction of the court, to be entitled to be inserted therein according to the provisions of this Act, and shall retain on the said list the names of all persons to whom no objection shall have been duly made, and shall also retain on the said lists the name of every person who shall have been objected to by any person, unless the party so objecting shall appear by himself or by some one on his behalf in support of such objection; and where the name of any person inserted in any one of the said lists shall have been duly objected to, and the person objecting shall appear by himself or by some one on his behalf in support of such objection, the court shall require proof of the qualification of the person so objected to; and in case the qualification of such person shall not be proved to the satisfaction of the court the mayor shall expunge the name of every such person from the said lists, and he shall also expunge from the said lists the name of every person who shall be proved to the court to be dead, and shall correct any mistake or supply any omission which shall be proved to the court to have been made in any of the said

lists in respect of the name or place of abode of any person who shall be included in any such list, or in respect of the local description of his property: provided always, that no person's name shall be inserted by the mayor in any such list, or shall be expunged therefrom, except in the case of death, unless notice shall have been given as is hereinbefore required in each of the said cases.

*XIX. Power to mayor, &c., of adjourning, of administering oaths, &c.]* And be it enacted, that every mayor holding any court under this Act for the revision of the said lists shall have power to adjourn the same from time to time, so that no such adjourned court shall be held after the fifteenth day of October in any year, and shall have power to require any overseer, or person having the custody of any book containing any rate made for the relief of the poor during that or any preceding year, in any parish wholly or in part within the borough, to produce the same and allow the same to be inspected at any court to be held for revision of the burgess lists, and shall have power to administer an oath to the town clerk and to the overseers, and to all persons claiming to be inserted in or making objection to the omission or insertion of any name in any of the said lists, and to all persons objected to in any of such lists, and to all persons claiming to have any mistake in any of such lists corrected, and to all witnesses who may be tendered or examined on either side; and the mayor and assessors shall, upon the hearing in open court, determine upon the validity of such claims and objections, and the mayor shall, in open court, write his initials against the names respectively struck out or inserted, and against any part of the said lists in which any mistakes shall have been corrected, and shall sign his name to every page of the several lists so settled.

*XX. Barristers to be appointed to revise the lists in the first year.] (a)*

*XXI. Affirmation may be substituted for oath.]* And be it enacted, that every person authorized by law to make an affirmation instead of taking an oath shall make such affirmation in every case in which by this Act an oath is required to be taken; and if any person taking any oath required by this Act, or making any affirmation, instead of taking such oath, shall wilfully swear or affirm falsely, such person shall be deemed guilty of perjury, and shall be punished accordingly.

*XXII. Revised borough lists to be kept by the town clerk and copied into books, with the names numbered.—Such book to be the roll of burgesses entitled to vote.]* And be it enacted, that the burgess lists so revised and signed as last aforesaid, shall be delivered by the mayor to the town clerk of such borough, who shall keep the same, and shall cause the said burgess lists to be fairly and truly copied into one general alphabetical list in a book to be by him provided for that purpose, with every name therein numbered, beginning the numbers from the first name, and continuing them in a regular series to the last name, and shall cause such books to be completed on or before the twenty-second day of October in every year,

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(a) This section, which expired in 1835 seems to have escaped the notice of the compilers of the "Chronological Table and Index of the Statutes, 2nd ed. 1873, and of the framers of the Statute Law Revision Act, 1874 (37 & 38 Vict. c. 35).



and shall deliver such books, together with the lists, at the expiration of his office, to the person succeeding him in such office; and every such book in which the said burgess lists shall have been copied shall be the burgess roll of the burgesses of such borough entitled to vote after the passing of this Act, in the choice of the councillors, assessors, and auditors of such borough, as hereinafter mentioned, at any election which may take place in such borough between the first day of November inclusive in the year wherein such burgess roll shall have been made and the first day of November in the succeeding year; provided that no stamp duty shall be payable in respect of the admission, registry, or enrolment of any burgess, according to the provisions of this Act.

XXIII. *Copies of the burgess roll to be printed for sale.*] And be it enacted, that the town clerk of every borough shall cause to be written or printed copies of the burgess roll in every year, and shall deliver such copies to all persons applying for the same, on payment of a reasonable price for each copy; and the monies arising from the sale thereof, and of the overseers' lists, and of the list of claims and objections as aforesaid, shall be paid over to the treasurer of such borough, and shall be applied by him in aid of the borough fund hereinafter mentioned.

XXIV. *Expenses of overseers how to be defrayed.*] And be it enacted, that the said council of every borough shall take an account of the reasonable expenses incurred by the overseers of the poor in carrying into effect the several provisions of this Act so far as relates to the said lists, and shall order the treasurer of the said borough to pay the same out of the borough fund of the said borough.

XXV. *Mayor, aldermen, and councillors to be chosen in every borough, who together shall constitute the council of the borough.*] And be it enacted, that in every borough shall be elected, at the time and in the manner hereinafter mentioned, one fit person who shall be and be called "the mayor" of such borough; and a certain number of fit persons, who shall be and be called "aldermen" of such borough; and a certain number of other fit persons who shall be and be called "the councillors" of such borough; and such mayor, aldermen, and councillors for the time being shall be and be called "the council" of such borough; and the number of persons so to be elected councillors of such borough shall be the number of persons in that behalf mentioned in conjunction with the names of such borough in the schedules (A.) and (B.) to this Act annexed; and the number of persons so to be elected aldermen shall be one-third of the number of persons so to be elected councillors; and on the ninth day of November in this present year the councillors first to be elected under the provisions of this Act, and on the ninth day of November in the year one thousand eight hundred and thirty-eight, and in every third succeeding year, the council for the time being of every borough shall elect from the councillors, or from the persons qualified to be councillors, the aldermen of such borough, or so many as shall be needed to supply the places of those who shall then go out of office according to the provisions hereinafter contained; and that upon the ninth day of November in the year one thousand eight hundred and thirty-eight, and in every third succeeding year, one half of the number appointed as aforesaid to be

the whole number of the aldermen of every borough shall go out of office ; and the councillors immediately after the first election of aldermen shall appoint who shall be the aldermen who shall go out of office in the year one thousand eight hundred and thirty-eight, and thereafter those who shall go out of office shall always be those who have been aldermen for the longest time without re-election: provided always, that any aldermen so going out of office may be forthwith re-elected, if therein qualified as herein provided ; provided also, that the aldermen so going out of office shall not be entitled to vote in the election of a new alderman.

*XXVI. Mayor and aldermen to continue to be members of the council during their offices.*] And be it enacted, that the mayor and aldermen shall, during their respective offices, continue to be members of the council of the borough, notwithstanding anything hereinafter contained as to councillors going out of office at the end of three years.

*XXVII. Future vacancies in the office of aldermen how to be filled up.*] And be it enacted, that whenever any extraordinary vacancy shall take place in the office of alderman of any borough, the council of such borough shall, within ten days after such vacancy shall occur, on a day to be fixed by the mayor for such purpose, elect some other fit person to fill such vacancy, either from the councillors or from the persons qualified to be councillors ; and in case any councillor shall be elected to fill the office of alderman then the vacancy which will thereby be occasioned in the council shall be filled up at the time and in the manner hereinafter directed ; and every person so elected an alderman to fill an extraordinary vacancy shall hold such office until the time when the person in the room of whom he was chosen would regularly have gone out of office, and he shall then go out of office, but may be re-elected if then qualified as herein provided.

*XXVIII. Who are not qualified to be chosen mayor or councillor.*] And be it enacted, that no person being in holy orders, or being the regular minister of any dissenting congregation, shall be qualified to be elected or to be a councillor of any such borough or an alderman of any such borough, nor shall any person be qualified to be elected or to be a councillor or an alderman of any such borough, who shall not be entitled to be on the burgess list of such borough, nor unless he shall be seised or possessed of real or personal estate or both to the following amount, that is to say, in all boroughs directed by this Act to be divided into four or more wards to the amount of one thousand pounds, or be rated to the relief of the poor of such borough upon the annual value of not less than thirty pounds, and in all boroughs directed to be divided into less than four wards, or which shall not be divided into wards, to the amount of five hundred pounds, or be rated to the relief of the poor in such borough upon the annual value of not less than fifteen pounds, or during such time as he shall hold any office or place of profit, other than that of mayor, in the gift or disposal of the council of such borough, or during such time as he shall have directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of such council : provided that no person shall be disqualified from being a councillor or alderman of any borough as aforesaid by reason of his being a proprietor or shareholder of any company which shall contract with the council of such borough for lighting or supplying with water or insuring against fire any part of such borough.

**XXIX.** *Who shall vote in the election for councillors.*] And be it enacted, that every burgess of every borough who shall be enrolled on the burgess roll for the time being of such borough shall be entitled to vote in the election of councillors and of the auditors and assessors hereinafter mentioned for such borough, and no person who shall not be enrolled in such burgess roll for the time being shall have any voice or be entitled to vote in any such election.

**XXX.** *Councillors to be chosen on the 1st November in every year.*] And be it enacted, that upon the first day of November in every year the burgesses so enrolled in every borough shall \* \* \* (a) elect from the persons qualified to be councillors the councillors of such borough, or such part of them as shall be needed to supply the places of those who shall then go out of office: provided nevertheless, that whenever any day by this Act appointed for any purpose shall in any year happen on a Sunday, in every such case the business so appointed to be done shall take place on the Monday following.

**XXXI.** *One-third part of the council to go out of office annually.*] And be it enacted, that upon the first day of November one thousand eight hundred and thirty-six, and in every succeeding year, one third part of the number appointed as aforesaid to be the whole number of the councillors of every borough shall go out of office; and in the said year one thousand eight hundred and thirty-six those who shall go out of office shall be the councillors who were elected under the provisions of this Act by the smallest numbers of votes in this present year, and in the next year, one thousand eight hundred and thirty-seven, those who shall so go out of office shall be the councillors who were elected under the provisions of this Act by the next smallest numbers of votes in this present year, the majority of the whole council always determining, when the votes for any such persons shall have been equal, who shall be the persons so to go out of office; and thereafter those who shall so go out of office shall always be the councillors who have been for the longest time in office without re-election; provided always, that any councillor so going out of office shall be capable of being forthwith re-elected, if then qualified, as herein provided.

**XXXII.** *Elections to be held before mayor.*]—And be it enacted, that every election of councillors within any borough according to the provisions of this Act shall be held before the mayor \* for the time being of such borough, except as herein is excepted; and the voting at every such election shall commence at nine o'clock in the forenoon, and shall finally close at four o'clock in the afternoon of the same day, and shall be conducted in manner following; that is to say, every burgess entitled to vote in the election of councillors may vote for any number of persons not exceeding the number of councillors then to be chosen (b).

**XXXIII.** *Polling booths to be provided.*] And be it enacted, that at every election in any borough the mayor, if it shall appear to him expedient for taking the poll at such election, may cause booths to be erected,

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(a) The words "openly assemble and" are repealed—35 & 36 Vict. c. 33 (the Ballot Act, 1872), s. 32, sched. 4, *post*.

(b) The provisions as to open voting and those relating to assessors are repealed—35 & 36 Vict. c. 33 (the Ballot Act, 1872), s. 32, sched. 4, *post*.

or rooms to be hired and used as such booths, for different parts of such borough, which may be situated either in one place or in several places \* \* \* (a) and shall cause to be affixed on the most conspicuous part of each of the said booths the names of the parts for which such booth is respectively allotted; and no person shall be admitted to vote at any such election except at the booth allotted for the part wherein the house, warehouse, counting-house, or shop occupied by him as described in the burgess roll may be; but in case no booth shall happen to be provided for any particular part as aforesaid the votes of the persons voting in respect of property situate in any part so omitted may be taken at any of the said booths; and public notice of the situation, division, and allotments of the different booths shall be given two days before the commencement of the poll by the mayor; \* \* \* (a) provided also, that no election shall be holden under this Act in any borough in any church, chapel, or other place of public worship.

XXXIV. *No inquiry of the voter except as to his identity, and whether he has voted before at the same election.—Forms of questions as to these points.*] And be it enacted, that no inquiry shall be permitted at any election as to the right of any person to vote as a burgess in any borough, except only as follows; (that is to say,) that the mayor or other presiding officer shall, if required by any two burgesses entitled to vote in the same borough, put to any voter at the time of his delivering in his voting paper, and not afterwards, the following questions, or any of them, and no other:

\* \* \* \* \*

2. Are you the person whose name appears as *A. B.* on the burgess roll now in force for this borough, being registered therein as rated for property described to be situated in ———? [*Here specify the street, &c., as described in the burgess roll.*]

3. Have you already voted at the present election?

And no person required to answer any of the said questions shall be permitted or qualified to vote until he shall have answered the same; and if any person shall wilfully make a false answer to any of the questions aforesaid he shall be deemed guilty of a misdemeanor, and may be indicted and punished accordingly.

XXXV. *Result of election, how to be declared.*] And be it enacted, that the mayor \* (c) shall examine the voting papers so delivered as aforesaid, for the purpose of ascertaining which of the several persons voted for are elected; and so many of such persons, being equal to the number of persons then to be chosen, as shall have the greatest number of votes, shall be deemed to be elected; and in case of an equality in the number of votes for any two or more persons, the mayor \* (c) shall name from amongst those persons for whom the number of votes shall be equal so many as shall be necessary to complete the requisite number of persons to be chosen \* \* \* (c).

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(v) Other provisions as to the booths repealed. 35 & 36 Vict. c. 33 (the Ballot Act, 1873), sect. 32, sched. 4, *post*.

(b) The first question as to the voter's signature to the paper is repealed as above.

(c) The provisions as to the inspection of the voting papers and as to the assessors are repealed as above.

XXXVI. *An alderman to be chosen to preside at election in case of the death or inability of the mayor.*] And be it enacted, that if the mayor of any borough shall, at the time when it shall be necessary to execute the powers and duties herein provided with respect to elections, be dead, absent, or otherwise incapable of acting, the council of such borough shall forthwith elect one of the aldermen to execute all such powers and duties in the place of the mayor; provided that in the first election of councillors and of auditors and assessors, as hereinafter provided, the mayor alone shall act with all the powers and duties hereinbefore enacted concerning the mayor and assessors jointly in such elections.

XXXVII. *Election of auditors and assessors.*] And be it enacted, that on the first day of March in the year one thousand eight hundred and thirty-six, and in every succeeding year, the burgesses of every borough shall elect from the persons qualified to be councillors by a majority of votes, two burgesses, who shall be and be called auditors of such borough, and two burgesses, who shall be and be called assessors of such borough; and every such auditor and assessor shall continue in office until the first day of March in the year following his election; and the election of such auditors and assessors respectively shall be in form and manner hereinbefore provided for the election of councillors: provided nevertheless, that in every such election of auditors or assessors no burgess shall vote for more than one person to be an auditor or assessor: provided also, that no burgess shall be eligible to be or be elected such auditor or assessor as aforesaid who shall be of the council, or the town clerk or treasurer of such borough.

XXXVIII. *Existing mayors and councillors to go out of office on election of councillors under this Act (a).*

XXXIX. *Where boroughs are to be divided into wards the bounds of the wards to be determined by the barristers appointed to revise the lists (b).*] And whereas it is expedient that certain boroughs of large population should be divided into wards before any election of councillors for such boroughs should take place; be it therefore enacted, that every borough in the said schedule (A.) shall be divided into the number of wards mentioned in such schedule in conjunction with the name of such borough, and it shall be lawful for the barrister \* appointed in pursuance of the provisions \* \* \* (c) and he \* is \* hereby required within the space of six weeks next after the passing of this Act to determine and set out the extent, limits, and boundary lines of such wards, and what portions of such borough shall be included therein respectively; and the copy of the particulars of such division shall be forthwith transmitted to one of his Majesty's principal secretaries of state, and, if his Majesty, by advice of his privy council shall approve such determination, shall be published in the *London Gazette*, and another copy of such

(a) Repealed—Statute Law Revision Act, 1874 (37 & 38 Vict. c. 35).

(b) The provisions of this section were temporary, as the barristers to revise the lists were appointed for the first year only, (see sect. 20) and might be considered as spent; but they are revived by 22 Vict. c. 35, s. 3, *post* as to barristers appointed sect. 2.

(c) Of 22 Vict. c. 35, s. 2, *post*. See last note.

particulars shall be delivered to the town clerk of such borough, to be by him safely kept among the public documents of such borough; and every such borough shall, after such publication as aforesaid, be deemed to be divided into such wards as shall be so determined and set out as aforesaid, and such division shall continue and be in force until the same shall be altered by authority of parliament: provided always, that if his Majesty, by advice of his privy council, shall not approve such determination, such publication as aforesaid shall nevertheless be made, and such division be in force for the purpose of any election under the provisions of this Act, and until such time as his Majesty shall by advice of his privy council, upon further information and report from such barristers, definitively approve the division of such borough into wards in manner hereinbefore mentioned.

XL. *Number of councillors for each ward to be assigned by the barristers according to certain rules (a).]* And be it enacted, that the said barrister \* shall, after the division of the borough into such number of wards \* \* \* apportion among the several wards of such borough the number of councillors mentioned in conjunction with the name of such borough, in the said schedule (A.); and in assigning the number of councillors to each ward the said barrister \* shall, as far as in his \* judgment be \* may deem it to be practicable, have regard as well to the number of persons rated to the relief of the poor in such ward as to the aggregate amount of the sums at which all the said persons shall be so rated: provided always, that the number of councillors assigned to each ward shall be a number divisible by three; and a copy of the particulars of the number of councillors so assigned to the several wards of the borough shall be forthwith transmitted to one of His Majesty's principal secretaries of state, and subject as aforesaid to the approval of His Majesty by the advice of his privy council, shall be published in the *London Gazette*, and another copy of such particulars shall be delivered to the town clerk of the borough, to be by him safely kept among the public documents of such borough; and the number of councillors so assigned to each ward of such borough shall, after such publication as aforesaid, be the number to be elected in such ward, and shall so continue until the same shall be altered by authority of parliament: provided always, that if His Majesty, by the advice of his privy council, shall not approve the number of councillors so assigned to each ward, such publication shall nevertheless be made, and the number of councillors so assigned to each ward of such borough by such barrister shall be the number to be elected in such ward at any election of councillors under this Act until such time as His Majesty shall by advice of his privy council, upon further information and report from such barrister, definitively approve such assignment in manner hereinbefore mentioned.

XLI. *Apportionment of councillors for each ward in which the ancient division is adhered to.]* [And whereas it may be convenient in divers boroughs to adhere in the division of the same into wards to the ancient division thereof into parishes or into districts under any local Act, or to adapt such division to local circumstances, and such division so made might render difficult such apportionment of councillors as is hereinbefore

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(a) See note (a) page xvii.

directed; be it therefore enacted, that in every such case the said barrister or barristers shall be empowered, at his or their discretion, subject as aforesaid to the approval of His Majesty by the advice of his privy council, to divide any borough in conjunction with the name of which, in the said schedule (A.), shall be mentioned any number of wards greater than two, into any number of wards more or less by one than the number of wards mentioned in conjunction with the name of such borough in the said schedule (b).]

XLII. *Power to examine rate books (c).*

XLIII. *Councillors \* \* \* (d) to be elected in wards by the burgesses of such wards.*] And be it enacted, that in every case in which there shall be a division into wards of any borough, the burgesses of every such ward, and none others, shall on the day fixed for the first election of councillors separately elect from the persons qualified to be councillors the whole number of councillors assigned to such ward respectively, and on the first day of November in any subsequent year shall separately elect from the persons qualified to be councillors one-third part of the whole number of councillors assigned to such ward, and on the first day of March next after the first election of councillors in such ward \* \* \* (d) and every such ward election first after such division into wards of any such borough shall be held before the mayor, or the person whom the mayor for the time being shall appoint in that behalf, and in every succeeding year shall be held before the alderman whom the councillors chosen in such ward shall yearly appoint in that behalf \* \* \* (d) and the votings and other proceedings in all other respects at such ward elections shall be conducted in the same manner as at election of councillors \* \* \* (d) respectively by the burgesses of the whole borough, and the alderman \* \* \* (d) of each ward shall have the same powers in regard to elections in their ward as the mayor \* \* \* (d) for the whole borough if not divided into wards; and every person so elected a councillor \* \* \* (d) in such ward shall hold his office for the same time that he would have held it if he had been elected by the burgesses of the whole borough and if the number elected in such ward had been the whole number for the borough.

XLIV. *Burgesses to vote in the ward in which their property is situated.*] And be it enacted, that every burgess of any borough shall be entitled to vote in the election of the councillors \* \* \* (d) to be chosen within that ward in which the property of such burgess for which he appears to be rated on the burgess roll for the time being of such borough shall appear to be situated, and not otherwise; and if any burgess shall be rated in respect of distinct premises in two or more wards, then he shall be entitled to be enrolled and to vote in such one of the said wards as he shall select, but not in more than one.

XLV. *Lists of the burgesses in each ward to be made out yearly.*] And be it enacted, that for the purpose of better ascertaining who are the

(b) As the provisions of this section are not referred to in 22 Vict. c. 35, s. 3, they appeared to have expired. But the section is not mentioned in the table and index of the statutes, 1873, or in the Statute Law Revision Act, 1874.

(c) Repealed—Statute Law Revision Act, 1874 (37 & 38 Vict. c. 35).

(d) The provisions relating to assessors are repealed by 35 & 36 Vict. c. 33 (The Ballot Act, 1872), s. 32, sched. 4, *post*, and see sect. 21. The enactment as to the assessors who should hold a court for revising the burgess lists with the mayor was previously repealed—1 Vict. c. 78, s. 4, *post*.

burgesses of any such ward the burgess roll of every borough so divided into wards shall thenceforward be made out, by or under the direction of the town clerk in alphabetical lists of the burgesses in each ward, to be called "ward lists."

XLVI. *Manner of proceeding if any person is elected a councillor in more than one ward.*] And be it enacted, that if any election of councillors \* (a) for any borough any person shall be elected a councillor \* (a) in more than one of the wards of such borough, he shall within three days after notice thereof choose, or in his default the mayor shall declare, for which one of the said wards such councillor \* (a) shall serve, and such person shall thereupon be held to be elected in that ward only which he shall so choose, or which the mayor shall so declare.

XLVII. *Occasional vacancies of councillor, auditor, or assessor' to be filled up by fresh election.*] And be it enacted, that if any extraordinary vacancy shall be occasioned in the office of councillor, auditor, or assessor for any borough, the burgesses entitled to vote shall, on a day to be fixed by the mayor of such borough, or in the case of a councillor or assessor, where the borough shall have been divided into wards, by the alderman of the ward in which the vacancy has happened (b) (such day not to be later than ten days after such vacancy) elect from the persons qualified to be councillors another burgess to supply such vacancy; and such election shall be held, and the voting and other proceedings, in case of a contest, shall be conducted in the same manner and subject to the same provisions as are hereinbefore enacted with respect to the election of councillors as aforesaid; and every person so elected shall hold such office until the time at which the person in room of whom he was chosen would regularly have gone out of office, and he shall then go out of office, but shall be capable of immediate re-election if then qualified as herein provided (c).

XLVIII. *Penalties on mayor, overseers, &c., neglecting to comply with provisions of this Act.*] And be it enacted, that if any mayor, alderman, or assessor of any borough who shall be in office at the time herein appointed for the revision by them of the burgess list under this Act, or for any election of councillors, assessors, or auditors which he is required to conduct or declare, shall neglect or refuse to revise such burgess list, or to conduct or declare such election as aforesaid, every such mayor, alderman, and assessor shall for every such offence forfeit and pay the sum of one hundred pounds; and if any overseer of any parish wholly or in part within any borough shall neglect or refuse to make out, sign, and deliver such lists as aforesaid, or if the town clerk of any borough shall neglect or refuse to receive, print, and publish such lists as aforesaid, or if any such overseer or town clerk shall refuse to allow any such list to be perused by any person having a right thereunto, every such overseer and town clerk respectively for every such offence shall forfeit and pay the sum of fifty pounds; and the said penalties hereby in such case imposed shall be recovered, with full costs of suit, by any person who will sue for the same within three calendar months after the commission of such offence, by

(a) See note to sect. 43, *ante*.

(b) So much of sect. 47 as relates to the fixing of the day of election by the alderman is repealed by 38 & 39 Vict. c. 40, s. 12, sched. 2, *post*, pp. cccxvi., cccxix. In case of extraordinary vacancies in the office of councillor, auditor or assessor, the day of election is to be fixed by the mayor. *Id.* sect. 9, *post*, p. cccxcv.

(c) Proviso relating to vacancies in the council repealed—1 Vict. c. 78, s. 11, *post*.



action of debt or on the case in any of His Majesty's superior courts of record; and the money so to be recovered shall, after payment of the costs and expenses attending the recovery thereof, be paid and apportioned as follows; (that is to say), one moiety thereof to the person so suing, and the other moiety thereof to the treasurer to be appointed by virtue of this Act, to be by him applied in aid of the borough fund hereinafter mentioned.

XLIX. *Council to elect the mayor every year from the councillors.*] And be it enacted, that on the ninth day of November in every year the council of the borough shall elect out of the aldermen or councillors of such borough a fit person to be the mayor of such borough, who shall continue in his office for one whole year; and in case a vacancy shall be occasioned in the office of mayor of the borough during such year by reason of any person who shall have been elected to such office not accepting the same, or by reason of his dying or ceasing to hold the said office, the council of the borough shall within ten days after such vacancy elect out of the aldermen or councillors of the said borough another fit person to be the mayor thereof for the remainder of the then current year.

L. *Mayor, aldermen, and councillors, auditors, and assessors, not to act until they have made a declaration of acceptance of office.—Aldermen, if required, to make a declaration of qualification once in three years.*] And be it enacted, that no person elected a mayor, alderman, or councillor, or auditor or assessor for any borough, shall be capable of acting as such, except in administering the declaration hereinafter contained, until he shall have made and subscribed before any two or more of such aldermen or councillors (who are hereby respectively authorized and required to administer the same to each other) a declaration in the words or to the effect following; (that is to say),

"I A. B., having been elected mayor [or alderman, councillor, auditor, or assessor] for the borough of — do hereby declare, that I take the said office upon myself, and will duly and faithfully fulfil the duties thereof according to the best of my judgment and ability; [and in case of the party being qualified by estate say, and I do hereby declare that I am seised or possessed of real or personal estate, or both [as the case may be,] to the amount of one thousand pounds or five hundred pounds, as the case may require, over and above what will satisfy all my debts]."

And that every alderman who shall have made and subscribed the foregoing declaration in respect of estate shall once in every period of three years, if required in writing so to do by any two members of the council, make and subscribe a declaration that he is qualified to the same amount in real or personal estate, or both, as the case may then be, as the amount mentioned in the declaration originally made and subscribed by him (a).

LI. *Every burgess elected to the office of alderman, councillor, auditor, or assessor, and every councillor elected to the office of mayor, shall accept the office or pay a fine to the borough fund.*] And be it enacted, that every person duly qualified who shall be elected to the office of alderman, councillor, auditor, or assessor, and every councillor who shall be elected to the

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(a) Proviso as to making declaration under 9 Geo. 4, c. 17, repealed—34 & 35 Vict. c. 48.

office of mayor for any borough, shall accept such office to which he shall have been elected, or shall in lieu thereof pay to the mayor, aldermen, and burgesses of such borough such fine not exceeding fifty pounds in case of aldermen, councillors, auditors, or assessors, and such fine not exceeding one hundred pounds in case of mayor, as the council of such borough by a bye-law to be made as hereinafter provided shall declare in that behalf; and such fine if not duly paid shall be levied by the warrant of any justice having jurisdiction within the borough, who is hereby required on the application of the council to issue the same, by distress and sale of the goods and chattels of the persons so refusing to accept office, with the reasonable charges of such distress; and every such person so elected shall accept such office by making and subscribing the declaration hereinbefore mentioned within five days after notice of his election, otherwise such person shall be liable to pay the said fine as for his non-acceptance of such office, and such office shall thereupon be deemed to be vacant, and shall be filled up by a fresh election to be made in the manner hereinbefore mentioned: provided always, that no person disabled by lunacy or imbecility of mind, or by deafness, blindness, or other permanent infirmity of body, shall be liable to such fine as aforesaid: provided also, that every person so elected to any such office who shall be above the age of sixty-five years, or who shall have already served such office respectively, or paid the fine for not accepting such office respectively, within five years from the day on which he shall be so re-elected, shall be exempted from accepting or serving the same office if he shall claim such exemption within five days after notice of his election: provided always, that nothing in this Act contained shall extend to compel the acceptance of any office or duty whatever in any borough by any military, naval, or marine officer in His Majesty's service on full pay, or by any officer or other person employed and residing within any of His Majesty's dockyards, victualling establishments, arsenals, or barracks.

LII. *Any mayor, alderman, or councillor, if he shall be declared bankrupt or insolvent, or absent himself from the borough, shall lose his office.*] Provided always, and be it enacted, that if any person holding the office of mayor, alderman, or councillor for any borough shall be declared bankrupt, or shall apply to take the benefit of any Act for the relief of insolvent debtors, or shall compound by deed with his creditors, or, being mayor, shall be absent for more than two calendar months, or being an alderman or councillor for more than six months, at one and the same time (unless in case of illness) from the borough of which he shall be mayor, alderman, or councillor, then and in every such case such person shall thereupon immediately become disqualified and shall cease to hold the office of such mayor, alderman, or councillor as aforesaid, and in the case of such absence shall be liable to the same fine, to be recovered in the same manner, as if he had refused to accept the said office, and the council thereupon shall forthwith declare the said office to be void, and shall signify the same by notice in writing under the hands of three or more of them, countersigned by the town clerk, to be affixed in some public place within the borough, and the said office shall thereupon become void; but every person so becoming disqualified and ceasing to hold such office on account of his being declared a bankrupt, or of his applying to take the benefit of any Act for the relief of insolvent debtors, or having compounded with his creditors as aforesaid, shall, on obtaining his certificate or on payment of his debts in full, be capable (if otherwise qualified) of being re-elected to such office, and every person becoming disqualified to hold such office on account of absence

as aforesaid shall on his return to such borough be capable of being re-elected to such office, provided he shall then be otherwise qualified.

*LIII. Penalty on persons not qualified, &c., acting as mayor, alderman, or councillor.*] And be it enacted, that if any person shall act as mayor, alderman, or councillor, or auditor or assessor, for any borough without having made the declaration hereinbefore required in that behalf, or without being duly qualified at the time of making such declaration, or after he shall cease to be qualified according to the provisions of this Act, or after he shall have become disqualified to hold any such office, he shall for every such offence forfeit the sum of fifty pounds, such sum to be recovered, with full costs of suit, by any person who will sue for the same within three calendar months after the commission of such offence, by action of debt or on the case in any of His Majesty's superior courts of record; and every person so sued by reason of not being so qualified in respect of estate shall prove that he was at the time of so acting qualified as aforesaid, or otherwise shall pay the said penalty, without any further evidence being given on the part of the plaintiff than that such person has acted as the mayor, or as alderman, councillor, auditor, or assessor (as the case may be) of such borough: provided always, that it shall be lawful for any defendant, by judge's order to be obtained within fourteen days after he shall have been served with process in any such action, to require the plaintiff to give security for costs; and in such case all further proceedings in the said cause shall be stayed until the plaintiff shall give security to the satisfaction of the proper officer of the court for the costs of such action in case a verdict shall pass for the defendant, or the plaintiff shall become nonsuit, or discontinue such action, or if upon demurrer or otherwise judgment shall be given against the plaintiff; and the defendant shall in either of such cases recover his full costs as between attorney and client: provided also, that no such action shall be brought except by a burgess of such borough, nor unless the burgess bringing the same shall, within fourteen days after the commission of the offence, have served a notice in writing personally upon the party committing such offence of his intention to bring such action; and in case the plaintiff in any such action shall obtain a verdict, the money so to be recovered shall, after payment of the costs and expenses attending the recovery thereof, be paid and apportioned as follows; (that is to say), one moiety thereof to the person so suing, and the other moiety thereof to the treasurer to be appointed by virtue of this Act, to be by him applied in aid of the borough fund: provided always, that all acts and proceedings of any person in possession of the office of mayor, alderman, councillor, auditor, or assessor, and acting as a mayor, alderman, councillor, auditor or assessor, shall, notwithstanding such disqualification or want of qualification, be as valid and effectual as if such person had been duly qualified.

*LIV Persons convicted of bribery disqualified from voting at any election in the borough (a).*

*LV. Persons offending in any of the cases aforesaid discovering others so offending to be discharged from all penalties(a).*

LVI. *No person liable to incapacity, penalty, &c., unless prosecuted within two years (a).*

LVII. *The mayor to be a justice of the peace for the borough and returning officer at elections of members to serve in parliament.]* And be it enacted, that the mayor for the time being of every borough shall be a justice of the peace of and for such borough, and shall continue to be such justice of the peace during the next succeeding year after he shall cease to be mayor, unless disqualified as aforesaid; and such mayor shall, during the time of his mayoralty, have precedence in all places within the borough, and in boroughs which return a member or members to serve in Parliament, other than the town of Berwick-upon-Tweed, and other than cities and towns which are counties of themselves, shall be the returning officer at all such elections; and in case the mayor shall, at the time when he shall be required to perform the duties of such returning officer, be dead, absent, or otherwise incapable of acting, or in case there shall be no mayor, the council of such borough shall forthwith elect one of the aldermen to be the returning officer for such borough in the place of the mayor being so dead, absent, or otherwise incapable: provided always, that in every case where there shall be more than one mayor within the boundaries of any boroughs as the same are or shall at any future time be settled in so far as respects the election of members to serve in parliament the mayor of that borough to which the writ of election shall be directed shall be the returning officer (b).

LVIII. *Power to council to appoint town clerk, treasurer, and other officers; and to take security for due discharge of their official duties.—Salaries.]* And be it enacted, that the council of every borough, on the ninth day of November in this present year, shall appoint a fit person not being a member of the council to be the town clerk of such borough, who shall hold his office during pleasure, and in any borough may be an attorney of one of His Majesty's superior courts at Westminster, any law, statute, charter or usage to the contrary notwithstanding; and the council of every borough shall \* \* \* appoint another fit person not being a member of the council to be the treasurer of the borough (c), and also such other officers as have been usually appointed in such borough, or as they shall think necessary for enabling them to carry into execution the various powers and duties vested in them by virtue of this Act, and may from time to time discontinue the appointment of such officers as shall appear to them not necessary to be re-appointed; and shall take such security for the due execution of his office by any such town clerk, treasurer, or other officer, as the said council shall think proper; and shall order to be paid to the mayor, and to the town clerk and treasurer, and to every such officer to be employed as aforesaid, such salary or allowance as the said council shall think reasonable; and in case of a vacancy in any such office as aforesaid, by death, resignation, removal, or otherwise, the council of such borough may appoint another fit person in the place of the person so making such vacancy; provided that the town clerk and treasurer shall not be the same person.

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(a) Repealed—35 & 36 Vict. c. 60, s. 29, *post*.

(b) See 24 & 25 Vict. c. 75, s. 2, *post*, as to the construction of this section.

(c) The appointment of treasurer is to be during the pleasure of the council. 7 & 8 Vict. c. 93, s. 6, *post*.

*LIX. Treasurer to pay no money but by order of council, except as provided by this Act.*] And be it enacted, that the treasurer of any borough shall pay no money on account of the mayor, aldermen, and burgesses of such borough, save only in such case as is provided by this Act, or upon the order in writing of the council, signed by three or more members of the council, and countersigned by the town clerk of such borough, or by order of the court of sessions of the peace for the borough, or of a justice of the peace acting in and for the borough in the discharge of his judicial duty, in such case as is provided by this Act, or in such case as a court of sessions of the peace for any county, or a justice of the peace acting in and for a county in the discharge of his judicial duty, may make an order for the payment of money on the treasurer of such county, or for the payment of the salaries granted to any recorder or police magistrate as hereinafter provided.

*LX. Officers to account, &c., according to the orders of the council.—Summary remedy against officers for not accounting, &c.*] And be it enacted, that every town clerk, treasurer, or other officer appointed by the council as aforesaid shall, at such times during the continuance of his office, or within three months after the expiration of his office, and in such manner as the said council shall direct, deliver to the council, or to such person as they shall authorize for that purpose, a true account in writing of all matters committed to his charge by virtue of this Act, and also of all monies which shall have been by him received by virtue or for the purposes of this Act, and how much thereof shall have been paid and disbursed, and for what purposes, together with proper vouchers for such payments; and also a list of the names of all such persons as shall not have paid the monies due from them for the purposes of this Act, and of the amount due from each of them; and every such officer shall pay all such monies as shall remain due from him to the treasurer for the time being, or to such person as the said council shall authorize to receive the same; and if any such officer shall refuse or wilfully neglect to deliver such account, or the vouchers relating to the same, or such list as aforesaid, or to make payment as aforesaid, or shall refuse or wilfully neglect to deliver to the said council, or to such person as they shall authorize, within three days after being thereunto required by notice in writing under the hands of any three or more of the said council, to be given to or left at the last place of abode of such officer, all books, papers, and writings in his custody or power relating to the execution of this Act, or to give satisfaction to the said council, or to such other person as aforesaid, respecting the same, then and in every such case, upon complaint made on behalf of the said council, by such person as they shall authorize for that purpose, of any such refusal or wilful neglect as aforesaid, to any justice of the peace for the county or other jurisdiction wherein such officer so refusing or neglecting shall be or reside, such justice is hereby authorized and required to issue a warrant under his hand and seal for bringing such officer before any two justices of the peace for such county or jurisdiction; and upon the said officer appearing, or not being found, it shall be lawful for such justices to hear and determine the matter in a summary way; and if it shall appear to such justices that any monies remain due from such officer, such justices may and they are hereby authorized and required, upon non-payment thereof, by warrant under their hands and seals, to cause such monies to be levied by distress and sale of the goods of such officer; and if sufficient goods shall not be found to satisfy the said monies and the charges of the distress, or if it

shall appear to such justices that such officer has refused or wilfully neglected to deliver such account, or the vouchers relating thereto, or such list as aforesaid, or that any books, papers, or writings relating to the execution of this Act remain in the hands or in the custody or power of such officer, and that he has refused or wilfully neglected to deliver the same, or to give satisfaction respecting the same as aforesaid, then and in every such case such justices shall and they are hereby required to commit such offender to the common gaol or house of correction for the county or jurisdiction where such offender shall be or reside, there to remain without bail until he shall have paid such monies as aforesaid, or shall have compounded with the said council for such monies, and shall have paid such composition in such manner as they shall appoint (which composition the said council are hereby empowered to make and receive) or until he shall have delivered a true account as aforesaid, together with such vouchers and lists as aforesaid, or until he shall have delivered up such books, papers, and writings, or have given satisfaction in respect thereof, to the said council, or to such other person as aforesaid, as the case may be: provided always, that no person so committed shall be detained in prison for want of sufficient distress only for a longer space of time than three calendar months: provided also, that nothing in this Act contained shall prevent or abridge any remedy by action against any such officer so offending as aforesaid, or against any surety for any such officer, but such officer shall not be sued by action and also proceeded against in a summary manner by virtue of this Act for the same cause.

LXI. *Councils of cities and towns which are counties to name a sheriff.*] And be it enacted, that in the city of Oxford, in the town of Berwick-upon-Tweed, and in the counties of the cities of Bristol, Canterbury, Chester, Coventry, Exeter, Gloucester, Lichfield, Lincoln, Norwich, Worcester, and York, and in the counties of the towns of Caermarthen, Haverfordwest, Kingston-upon-Hull, Newcastle-upon-Tyne, Nottingham, Poole, and Southampton, the council shall on the [first] day of November (a) in every year appoint a fit person to execute the office of sheriff, with the like duties and powers as the sheriff or the person filling the office of sheriff in the said town and counties respectively would have had if this Act had not passed (b).

LXII. *In certain boroughs, council to appoint a coroner.*] And be it enacted, that the council of every borough in which a separate court of quarter sessions of the peace shall be holden, as is hereinafter provided, shall within ten days next after the grant of the said court shall have been signified to the council of such borough, appoint a fit person, not being an alderman or councillor, to be coroner of such borough so long as he shall well behave himself in his office of coroner, and shall fill up every vacancy of the office of coroner of the borough, by death, resignation, or removal, within ten days next after such vacancy shall have occurred, and none thereafter shall take any inquisition which belongs to the office of coroner within such borough save only the coroner so from time to time to be appointed: and every such coroner, for every inquisition which he shall duly take within such borough, shall be entitled to have the sum of twenty

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(a) Altered to the ninth day of November by 6 & 7 Will. c. 105, s. 5, *post*.

(b) The remainder of this section is repealed by the Statute Law Revision Act, 1874 (37 & 38 Vict. c. 35); it had, in fact, expired.

shillings, and also the sum of ninepence for every mile exceeding two miles which he shall be compelled to travel from his usual place of abode to take such inquisition, to be paid by the treasurer out of the borough fund of such borough, by order of the court of quarter sessions for such borough.

*LXIII. Coroners to make returns to secretary of state.*] And be it further enacted, that on before the first day of February in every year after the passing of this Act every coroner appointed in any borough shall make and transmit to one of His Majesty's principal secretaries of state a return in writing, according to such form as the said secretary of state from time to time shall direct, of all the cases in which he may have been called upon to hold an inquest touching the cause of death of any person during the year ending on the thirty-first day of December immediately preceding.

*LXIV. County coroners to act in other boroughs.*] And be it enacted, that in every borough in and for which no separate court of quarter sessions of the peace shall be holden, no person from and after the end of this present year shall take any inquisition which belongs to the office of coroner within such borough, save only the coroner for the county or district in which such borough is situated; and the coroner of such county or district, for every inquisition which he shall duly take within any place or precinct within any such borough, shall be entitled to have such rateable fees and salary as would be allowed and due to him, and to be allowed and paid in like manner, as for any other inquisition taken by him within such county: provided always, that nothing in this Act contained shall extend or be construed to annul, diminish, or affect the authority of the lord high admiral, or of the commissioners for executing the office of lord high admiral of the United Kingdom for the time being, or of the judge of the high court of admiralty of England, as the lieutenant of the lord high admiral in the said court, to appoint coroners to act within the jurisdiction of the admiralty in the several ports and havens and on the sea coast of England, and to take inquisitions touching deaths happening within the said jurisdiction, as hath heretofore been done.

*LXV. Council empowered to remove certain officers.—Such officers to continue until removed.*] And be it enacted, that the council elected under this Act in any borough shall have power to remove from his office every bailiff, treasurer, or chamberlain, and every other ministerial or executive officer of such borough and body corporate who shall be in office at the time of the first election of councillors under this Act; and every such bailiff, treasurer, or chamberlain, and every other ministerial or executive officer in such borough shall continue to act in the same capacity as heretofore, and to execute all the duties heretofore belonging to his office, and be entitled to have the same salaries, fees, and emoluments as he would have had if this Act had not passed, until he shall be removed from his office, and no longer, unless he shall be reappointed according to the provisions of this Act; and every officer who shall be in possession or receipt of any monies, goods, valuable securities, books, and papers belonging to or concerning the body corporate whose officer he is, shall deliver up and account for the same to the council of such body corporate appointed under this Act; and the council shall have the same remedy against such officer to recover the same as is hereinbefore provided in the case of officers appointed by such council: provided always, that all the charters, deeds, muniments,

and records of every borough, or relating to the property thereof, shall be kept in such place as the council from time to time shall direct, and the town clerk for the time being shall have the charge and custody of and be responsible for the same.

LXVI. *Officers to receive compensation on removal; to deliver statement of claims.—Statement to be laid before council.—Appeal to the lords of the treasury.*] And be it enacted, that every officer of any borough or county who shall be in any office of profit at the time of the passing of this Act, whose office shall be abolished, or who shall be removed from his office under the provisions of this Act, or who shall not be reappointed as aforesaid, shall be entitled to have an adequate compensation to be assessed by the council, and paid out of the borough fund, for the salary, fees, and emoluments of the office which he shall so cease to hold, regard being had to the manner of his appointment to the said office, and his term or interest therein, and all other circumstances of the case; and every person entitled to such compensation as aforesaid shall deliver to the town clerk, or in case such person shall himself be town clerk then to the treasurer of the borough, a statement under the hand of such person setting forth the amount received by him or his predecessors in every year during the period of five years next before the passing of this Act on account of the salary, fees, emoluments, profits and perquisites in respect whereof he shall claim such compensation, distinguishing the office, place, situation, employment, or appointment, in respect whereof the same shall have been received, and containing a declaration that the same is a true statement according to the best of the knowledge, information, and belief of such person and also setting forth the sum claimed by him as such compensation; and the town clerk or treasurer, as the case shall be, shall lay such statement before the council, who shall take the same into consideration and determine thereon; and immediately upon such determination being made, the person preferring such claim, if he shall not himself be the town clerk, shall be informed thereof by notice in writing under the hand of the town clerk; and in case such claim shall be admitted in part and disallowed in part, such notice shall specify the particulars in which the same shall have been admitted and disallowed respectively; and in case the person preferring such claim shall think himself aggrieved by the determination of the council thereon, or in case one-third of the members of the council shall subscribe a protest against the amount of compensation allowed by the determination of the council, as excessive, it shall be lawful for the person preferring such claim, or any member of the council who shall subscribe such protest, to appeal to the lords commissioners of His Majesty's treasury, who shall thereupon make such order as to them shall seem just; and such order, signed by three or more of such lords commissioners, shall be binding on all parties: provided always, that if the council shall not determine on such claim within six calendar months after the aforesaid statement shall be delivered to the town clerk or treasurer, as the case shall be, such claim shall be considered as admitted: provided also, that it shall not be lawful for any member of the council to subscribe such protest as aforesaid, except within such period of six calendar months: provided also, that the person preferring such claim, if any member of the council shall so require, upon receiving notice in writing signed by the town clerk, unless such person shall himself be town clerk, in which case no such notice shall be requisite, shall from time to time attend at any meeting or adjourned meeting of the council for the investigation of such claim, and then and there, upon his oath or solemn affirmation, to be taken or made



before the mayor (who is hereby authorized to administer the same) shall answer all such questions as shall be asked by any member of the council touching the matters set forth in the statement subscribed to such person as aforesaid, and produce all books, papers, and writings, in his possession, custody, or power relating thereto: provided also, that every such officer who shall be continued in or reappointed to such office under the provisions of this Act, and who shall be subsequently removed from such office for any cause other than such misconduct as would warrant removal from any office held during good behaviour, shall be entitled to compensation in like manner as if he had been forthwith removed under the provisions of this Act, and had not been continued in or reappointed to such office.

*LXVII. Compensation to be secured by bond under common seal.]* And be it enacted, that the sum payable to any person as such compensation as aforesaid shall be secured to such person by bond or obligation under the common seal of the borough out of whose funds the same shall be payable, in a sufficient penalty, conditioned for the payment to such person, his executors or administrators or assigns, of such sum, with all arrears thereof (if any) accrued due before the date of such bond; and such bond or obligation shall be prepared and executed at the expense of the borough fund, and delivered to the person entitled to such compensation as soon as conveniently may be after the amount thereof shall have been admitted as aforesaid by the council of the borough; or shall have been determined, in the event of such appeal as aforesaid, by order of the said lords commissioners.

*LXVIII. Reservation of certain pensions and allowances.]* And be it enacted, that all pensions and allowances granted on or before the fifth day of June in this present year, by the corporate body named in the said schedules (A.) and (B.) in conjunction with any borough, to any retired officer or servant, or to the widow or child of any officer or servant, and all stipends and allowances which during seven years next before the said fifth day of June have been usually paid and granted to the minister or late minister of any church or chapel, or to the master or usher of any school, or to the governor or master of any hospital within such borough, and all charitable allowances which have been usually paid as aforesaid to the inmates of any almshouse by such corporate body, shall be secured, as soon as conveniently may be after the passing of this Act, to every person entitled or accustomed to have and receive the same, by bond or obligation under the common seal of the borough out of whose funds the same shall be payable, in a sufficient penalty, conditioned for the payment to such person, his executors and administrators, of such pension, stipend, or allowance, with all arrears thereof, if any, accrued due before the date of such bond; and such bond or obligation shall be prepared and executed at the expense of the borough fund.

*LXIX. All acts of the council to be decided by a majority of councillors present; one-third part of the whole number to be a quorum.—Who to preside.—Casting vote.—Notice of meetings of council.—Quarterly meetings of council.—Election of mayor.]* And be it enacted, that all acts whatsoever authorized or required by virtue of this Act to be done by the council of such borough, and all questions of adjournment or others that may come before such council may be done and decided by the majority of the members of the council who shall be present at any meeting held in pursuance

of this Act, the whole number present at such meeting not being less than one-third part of the number of the whole council; and at all such meetings the mayor, if present, shall preside; and the mayor, or, in the absence of the mayor, such alderman, or in the absence of all the aldermen, such councillor as the members of the council then assembled shall choose to be the chairman of that meeting, shall have a second or casting vote in all cases of equality of votes; and minutes of the proceedings of all such meetings shall be drawn up and fairly entered into a book to be kept for that purpose, and shall be signed by the mayor, alderman, or councillor presiding at such meeting; and the said minutes shall be open to the inspection of any burgess at all reasonable times on payment of a fee of one shilling: provided always, that previous to any meeting of the council held by virtue of this Act a notice of the time and place of such intended meeting shall be given three clear days at least before such meeting, by fixing the said notice on or near the door of the town hall of the borough; and such notice shall be signed by the mayor, who shall have power to call a meeting of the council as often as he shall think proper; and in case the mayor shall refuse to call any such meeting after a requisition for that purpose signed by five members of the council at the least shall have been presented to him, it shall be lawful for the said five members to call a meeting of the council by giving such notice as is hereinbefore required in that behalf, such notice to be signed by the said members instead of the mayor, and stating therein the business proposed to be transacted at such meeting, and in every case a summons to attend the council, specifying the business proposed to be transacted at such meeting, signed by the town clerk, shall be left at the usual place of abode of every member of the council or at the premises in respect of which he is enrolled a burgess, three clear days at least before such meeting; and no business shall be transacted at such meeting other than is specified in the notice: provided always, that there shall be in every borough four quarterly meetings in every year at which the council shall meet for the transaction of general business, and no notice shall need to be given of the business to be transacted on such quarterly days; and the said quarterly meetings shall be holden at noon on the ninth day of November, or if the ninth day of November shall fall on a Sunday, on the day following, and at such hour on such other three days before the first day of November then next following as the council at the quarterly meeting in November shall decide; and the first business transacted at the quarterly meeting in November shall be the election of mayor.

LXX. *Council may appoint committees.*] And be it enacted, that it shall be lawful for the council of any borough to appoint out of their own body, from time to time, such and so many committees, either of a general or special nature, and consisting of such number of persons as they may think fit, for any purposes which in the discretion of such council, would be better regulated and managed by means of such committees: provided always, that the acts of every such committee shall be submitted to the council for their approval.

LXXI. *Charitable trustees.*] And whereas divers bodies corporate now stand seised or possessed of sundry hereditaments and personal estate, in trust, in whole or in part for certain charitable trusts, and it is expedient that the administration thereof be kept distinct from that of the public stock and borough fund; be it enacted, that in every borough in which the

body corporate, or any one or more of the members of such body corporate, in his or their corporate capacity, now stands or stand solely, or together with any person or persons elected solely by such body corporate, or solely by any particular number, class, or description of members of such body corporate, seised or possessed for any estate or interest whatsoever of any hereditaments, or any sums of money, chattels, securities for money, or any other personal estate whatsoever, in whole or in part in trust or for the benefit of any charitable uses or trusts whatsoever, all the estate, right, interest, and title, and all the powers of such body corporate, or of such member or members of such body corporate, in respect of the said uses and trusts, shall continue in the persons who at the time of the passing of this Act are such trustees as aforesaid, notwithstanding that they may have ceased to hold any office by virtue of which before the passing of this Act they were such trustees, until the first day of August one thousand eight hundred and thirty-six, or until parliament shall otherwise order, and shall immediately thereupon utterly cease and determine: provided always, that if any vacancy shall be occasioned among the charitable trustees for any borough before the said first day of August, it shall be lawful for the lord high chancellor or lords commissioners of the great seal for the time being, upon petition, in a summary way, to appoint another trustee to supply such vacancy; and every person so appointed a trustee as last aforesaid shall be a trustee until the time at which the person in the room of whom he was chosen would regularly have ceased to be a trustee, and he shall then cease to be a trustee: provided also, that if parliament shall not otherwise direct, on or before the said first day of August one thousand eight hundred and thirty-six, the lord high chancellor or lords commissioners of the great seal shall make such orders as he or they shall see fit for the administration, subject to such charitable uses or trusts as aforesaid, of such trust estates.

**LXXII.** *Council to act as trustees where corporators were ex officio sole trustees.*] And be it enacted, that the body corporate named in the said schedules (A.) and (B.) in conjunction with any borough shall be trustees for executing by the council of such borough the powers and provisions of all Acts of parliament made before the passing of this Act (other than Acts made for securing charitable uses and trusts), and of all trusts (other than charitable uses and trusts) of which the said body corporate, or any of the members thereof in their corporate capacity, was or were sole trustees before the time of the first election of councillors in such borough under this Act.

**LXXIII.** *Council to appoint a limited number of councillors to be joint trustees for certain purposes.*] And be it enacted, that in every borough in which the body corporate, or a particular or limited number, class, or description of members of the body corporate, or of persons appointed by the body corporate, was or were before the passing of this Act trustees jointly with other trustees for the execution of any Act of parliament, or of any trust, or in which the body corporate, or any particular or limited number, class, or description of members or nominees of the body corporate by any statute, charter, bye-law, or custom was or were before the passing of this Act lawfully appointed to or exercised any powers, duties, or functions whatsoever not otherwise herein provided for, and the continuance of which is not inconsistent with the provisions of this Act, the council of such borough on the day named in such Act as last aforesaid,

or in the deed or will by which such trust is created for a new election, nomination, or appointment of trustees, or on which such new election, nomination, or appointment has usually been made (and if there shall be no such day named or usually observed, then on the first day of January in every year), shall appoint the like number of members of the council, or as near as may be to the like number of members of the council, as there was theretofore members or nominees of such corporate body who in right of their office were such trustees, or charged with the execution of such powers, duties, and functions, in room of the members or nominees of such corporate body ceasing to be trustees, or ceasing to exercise such powers, duties, and functions by virtue of this Act, and in every case of extraordinary vacancy among the trustees or persons so appointed by the council shall forthwith appoint one other member of the council in the room of the person by whom such vacancy has been made, and to hold his trust or office for such time as the person by whom such vacancy has been made would regularly have held it.

LXXIV. *Present trustees of certain Acts continued for a definite time (a).*

LXXV. *Powers vested in trustees may be transferred to councillors (b).*

LXXVI. *A watch committee to be appointed to consist of the mayor and councilmen; such committee to appoint constables for the borough.—Constables to be for the county, &c., as well as borough.]* And be it enacted, that the council to be elected for any borough shall, immediately after the first election, and so from time to time thereafter as they shall deem expedient, appoint, for such time as they may think proper, a sufficient number of their own body, who, together with the mayor of the borough for the time being, shall be and be called the watch committee for such borough; and all the powers hereinafter given to such committee may be executed by the majority of those who shall be present at any meeting of such committee, the whole number present at such meeting being not less than three; and such watch committee shall, within three weeks after their first formation, and so from time to time thereafter as occasion shall require, appoint a sufficient number of fit men who shall be sworn in before some justice of the peace having jurisdiction within the borough to act as constables for preserving the peace by day and by night, and preventing robberies and other felonies, and apprehending offenders against the peace; and the men so sworn shall not only within such borough, but also within the county in which such borough or part thereof shall be situated, and also within every county being within seven miles of any part of such borough, and also within all liberties in any such county, have all such powers and privileges, and be liable to all such duties and responsibilities, as any constable duly appointed now has or hereafter may have within his constableness by virtue of the common law of this realm, or of any statutes made or to be made, and shall obey all such lawful commands as they may from time to time receive from any of the justices of the peace having jurisdiction within such borough, or within any county in which they shall be called on to act as constables, for conducting themselves in the execution of their office.

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(a) Repealed—Statute Law Revision Act, 1874 (37 & 38 Vict. c. 35).

(b) Repealed 20 & 21 Vict. c. 50, s. 2, *post*.

LXXVII. *Watch committee to make regulations for the management of the constables.*] And be it enacted, that the watch committee for any such borough as aforesaid may from time to time frame such regulations as they shall deem expedient for preventing neglect or abuse, and for rendering such constables efficient in the discharge of their duties; and the said committee, or any two justices of the peace having jurisdiction within the borough, may at any time suspend or dismiss any constable whom they shall think negligent in the discharge of his duty, or otherwise unfit for the same; and when any man shall be so dismissed, or cease to belong to the said constabulary force, all powers vested in him as a constable by virtue of this Act shall immediately cease: and no man so dismissed as aforesaid shall be re-appointed without the consent of two of the justices of the peace having jurisdiction within the borough.

LXXVIII. *Power to constables to apprehend disorderly persons, &c.*] And be it enacted, that it shall be lawful for any constable, during the time of his being on duty, to apprehend all idle and disorderly persons whom he shall find disturbing the public peace, or whom he shall have just cause to suspect of intention to commit a felony, and to deliver any person so apprehended into the custody of the constable appointed under this Act, who shall be in attendance at the nearest watch-house, in order that such person may be secured until he can be brought before a justice of the peace to be dealt with according to law, or may give bail for his appearance before a justice of the peace, if the constable shall think fit to take bail, in the manner hereinafter mentioned.

LXXIX. *Constables attending at the watch-houses in the night may take bail by recognizance from persons brought before them for petty misdemeanors, such recognizance to be conditioned for the appearance of the parties before a magistrate.*] And be it enacted, that where any person charged with any petty misdemeanor shall be brought without the warrant of a justice of the peace into the custody of any constable appointed under this Act, during his attendance in the night-time at any watch-house within any such borough as aforesaid, it shall be lawful for such constable, if he shall think fit, to take bail by recognizance, without any fee or reward, from such person, conditioned that the person shall appear for examination within two days before a justice of the peace within the borough at some time and place to be specified in the recognizance; and every recognizance so taken shall be of equal obligation on the parties entering into the same, and liable to the same proceedings for the estreating thereof as if the same had been taken before a justice of the peace; and the constable shall enter in a book, to be kept for that purpose in every watch-house, the names, residence, and occupation of the party, and his surety or sureties, if any, entering into such recognizance, together with the condition thereof, and the sums respectively acknowledged, and shall lay the same before such justice as shall be present at the time and place when and where the party is required to appear; and if the party does not appear at the time and place required, or within one hour after, the justice shall cause a record of the recognizance to be drawn up to be signed by the constable, and shall return the same to the next general or quarter sessions of the peace for the borough, or for the county in which such borough is situate, in those boroughs for which there shall be no separate general or quarter sessions of the peace, with a certificate at the back thereof, signed by such justice, that the party has not complied with the obligation therein contained; and the clerk of the peace shall make the like estreats and schedules of every

such recognizance as of recognizances forfeited in the sessions of the peace; and if the party not appearing shall apply by any person on his behalf to postpone the hearing of the charge against him, and the justice shall think fit to consent thereto, the justice shall be at liberty to enlarge the recognizance to such further time as he shall appoint: and when the matter shall be heard and determined, either by the dismissal of the complaint or by binding the party over to answer the matter thereof at the sessions, or otherwise, the recognizance for the appearance of the party before a justice shall be discharged without fee or reward.

LXXX. *Penalties on constables for neglect of duty.*] And be it enacted, that if any constable of any borough shall be guilty of any neglect of duty or of any disobedience of any lawful order, every such offender, being convicted thereof before any two justices of the peace, shall for every such offence be liable to be imprisoned for any time not exceeding ten days, or to be fined in any sum not exceeding forty shillings, or to be dismissed from his office, as such justices shall in their discretion think meet.

LXXXI. *Penalty for assaults on constables.*] And be it enacted, that if any person shall assault or resist any constable of any borough appointed under this Act in the execution of his duty, or shall aid or incite any person so to assault or resist, every such offender, being convicted thereof before any two justices of the peace, shall for every such offence forfeit and pay such sum not exceeding five pounds as the said justices shall think meet: provided always, that nothing herein contained shall prevent any prosecution by way of indictment against any person so offending, but so as that such person shall not be prosecuted by indictment and also proceeded against under this Act for the same offence.

LXXXII. *Regulation and payment of expenses.—Rewards for activity, &c.*] And be it enacted, that the treasurer of every borough appointed under this Act shall pay to the constables of such borough appointed under this Act such salaries, wages, and allowances, and at such periods, as the watch committee for such borough shall, subject to the approbation of the council, direct, and the council shall order to be paid also any extraordinary expenses which such persons shall appear to have necessarily incurred in apprehending offenders and executing the orders of any justice of the peace having jurisdiction within such borough, such expenses having been first examined and approved by such justice; and the said treasurer shall also pay such further sums as the watch committee shall, subject to the approbation of the council, award to any of the persons belonging to the said constabulary force, as a reward for extraordinary diligence or exertion, or as a compensation for wounds or severe injuries received in the performance of their duty, or as an allowance to such of them as shall be disabled by bodily injury received, or shall be worn out by length of service, and all other charges and expenses which the watch committee shall, subject to the approbation of the council, direct to be paid for the purposes of the constabulary force under this Act.

LXXXIII. *Magistrates to appoint annually a certain number of persons to act as special constables.*] And be it enacted, that any two or more of the justices of the peace having jurisdiction within any borough are hereby authorized and required in the month of October in every year to nominate and appoint by precept, in writing under their hands, so many

as they shall think fit of the inhabitants of such borough (not legally exempt from serving the office of constable), to act as special constables within such borough whensoever they shall be required by the warrant of any of the justices of the peace having jurisdiction within such borough so to act, and not otherwise; and every such warrant shall recite that in the opinion of the justice granting the same the ordinary police force of the borough is insufficient at that time to maintain the peace of the borough; and every person so appointed a special constable shall take the oath set forth in the Act passed in the session of parliament holden in the first and second years of the reign of His present Majesty, intituled *An Act for amending the Laws relative to the Appointment of Special Constables, and for the better Preservation of the Peace*, (a) and shall have the powers and immunities and be liable to the duties and penalties enacted by the said last-mentioned Act; and every person so appointed a special constable shall receive, out of the borough fund, for every day during which he shall be called out to act as such, the sum of three shillings and sixpence, and no more.

LXXXIV. *On notice of appointment of constables the present provisions in local Acts, as to watching, &c., to cease.—Watch-boxes, &c., to be given up.*] And be it enacted, that as soon as constables shall have been appointed by the watch committee for any borough, a notice, signed by the mayor of such borough, specifying the day on which such constables shall begin to act shall be fixed on the door of the town hall and every church within such borough; and on the day so specified in such notice \* \* \* (b) so much of all Acts made before the passing of this Act as relates to the appointment, regulation, powers, and duties, or to the assessment or collection of any rate to provide for the expenses of any watchmen, constables, patrol, or police for any place situated within such borough, shall cease and determine; and all watch-houses and watch-boxes in any such place, and all arms, accoutrements, and other necessities provided at the public expense for any watchmen, constables, patrol, or police therein, shall be given up to such persons as shall be named by the said mayor in such notice, for the use and accommodation of the constables to be appointed under this Act, and all the property so to be given up shall be deemed to belong to the body corporate of such borough; and in case any person having the charge, control, or possession of any watch-house, watch-box, arms, accoutrements, or necessities as aforesaid shall neglect or refuse to give up the same as hereinbefore required, every such offender, being convicted thereof before any two justices of the peace, shall for every such offence forfeit and pay, over and above the value of the property not given up, such sum not exceeding five pounds as the said justices shall think meet; and where there shall be any building in any such place as aforesaid a part only of which building shall have been heretofore used as a watch-house, such part shall be given up every day from the hour of four in the afternoon until the hour of nine in the forenoon, for the use and accommodation of the constables to be appointed under this Act; and if any person, having the charge, control, or possession of any such building shall neglect or refuse to give up such part thereof for the purposes aforesaid, or to permit free access thereto or egress therefrom during any portion of the time above prescribed, every

(a) 1 & 2 Will. 4, c. 41.

(b) Part of this section is repealed by the Statute Law Revision Act, 1874 (37 & 38 Vict. c. 35).

such offender, being convicted thereof before any two justices of the peace shall for every such offence forfeit and pay such sum not exceeding five pounds as the said justices shall think meet: provided nevertheless, that in every case in which before the passing of this Act a rate might be levied in any borough for the purpose of watching, conjointly with any other purpose, nothing in this Act contained shall be construed to prevent the levying and collecting of such rate for such other purpose solely, or to repeal the powers given in any Act so far as the same relate to such other purpose: provided always, that where the amount of such rate before the passing of this Act might not exceed a given rate in the pound on the value of property rateable thereunto, the rate so to be levied for such other purpose solely shall not exceed such proportion of the said given rate in the pound as shall appear to have been expended for such purpose other than watching by an account of the average yearly expenditure during the last seven years, or where such rate shall not have been levied during seven years, then during such less number of years as such rate shall have been levied.

**LXXXV.** *Proviso as to rates in arrear, and as to debts.*] Provided always, and be it enacted, that any rate for defraying the expenses of any watchmen, constables, patrol, or police in any such place as aforesaid, made previously to the day specified in such notice as aforesaid, shall be levied and collected in the same manner as if this Act had not been passed: provided also, that nothing herein contained shall prevent the levying and collecting of any rate in any such place as aforesaid for the purpose of paying any debt contracted before the passing of this Act, or the interest of any such debt, but that such rate shall and may be levied and collected in the same manner as if this Act had not been passed.

**LXXXVI.** *Watch committee to transmit quarterly to the secretary of state a copy of their rules, &c.*] And be it enacted, that the watch committee of every such borough shall, on the first day of January, the first day of April, the first day of July, and the first day of October in every year, transmit to one of His Majesty's principal secretaries of state (a) a copy of all rules, orders, and regulations which shall from time to time be made by such watch committee or by the council of such borough for the regulation and guidance of such constables or policemen.

**LXXXVII.** *Power for council to order parts of a borough not within a local Act as to lighting to be included in such Act.*] And whereas parts of certain boroughs are within the provisions of one or more local Act or Acts for regulating the lighting thereof, and certain other parts of the same boroughs are not within the provisions of any local Act for regulating the lighting thereof, and for want of such lighting the efficiency of the constables may be much diminished, and great facilities afforded for the commission of crimes and for the escape of offenders; for remedy thereof, be it enacted, that it shall be lawful for the council of any borough in any part of which there is a local Act for the lighting thereof to make an order that any part of such borough not being within the provisions of any local Act for the lighting thereof shall from and after a certain day to be named in such order, be taken to be within the provisions of such local Act or Acts

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(a) That part of this section which required the watch committee to transmit a quarterly report of the number of constables, &c., is repealed by 21 & 22 Vict. c. 67, s. 1 (2).



for lighting any part of such borough as the common council (b) shall specify in such order; and after such day the part named in such order shall be within the provisions of the Act or Acts so specified so far as relates to lighting, or to any rates authorized to be levied for the purpose of lighting as fully as if such part had been originally named in such Act or Acts, anything in such Act or Acts to the contrary notwithstanding: provided always, that every part named in such order shall be lighted in the like manner as those parts which before the making of such order were within the provisions of such local Act, and that the rate to be raised for the purpose of defraying the expenses of lighting any part so named in such order shall not exceed the average expense in the pound of the lighting of the other parts of such borough.

LXXXVIII. *Council may assume the powers of inspectors under 3 & 4 Will. 4, c. 90, for lighting any part of the borough not within a local Act for lighting the same.*] And be it enacted, that if the council of any borough chosen under this Act shall, by public notice to be affixed on the outer door of the town hall or in some public place within the borough, declare that on a certain day, to be named in such notice, not less than twenty-one days after the day on which such public notice shall have been given, they will take upon themselves the powers given to the inspectors named in a certain Act made in the third and fourth year of His present Majesty, intituled *An Act to repeal an Act of His late Majesty King George the Fourth for the lighting and watching of Parishes in England and Wales, and to make other provisions in lieu thereof*, so far as the same relates to the lighting of the whole or any part of any borough which is not within the provisions of any local Act, or in which there is no power of levying rates for lighting the same, the council of such borough shall, after the day named in such notice, have the same powers and duties as belong to inspectors under the said last-recited Act in regard to lighting, and to levying rates for the purpose of lighting such part of the borough, except so far as the same are contrary to or inconsistent with the provisions of this Act; and in such case the council shall have the sole power to fix and determine the amount of money which they will call for in any one year for the purpose of lighting such part of the borough, so that such sum shall not exceed the rate of sixpence in the pound on the full and fair annual value of all property ratable to the relief of the poor within such part of the borough: provided also, that it shall not be lawful in such case for the inhabitants of such part of the borough at any time to determine that the provisions of the said recited Act shall cease to be acted upon.

LXXXIX. *Act not to interfere with the regulations for the government, &c., of dockyards, arsenals, &c.*] Provided always, and be it enacted, that nothing herein contained shall be construed to interfere with the watching, paving, or lighting, and internal regulations established for the government and security of any of His Majesty's dockyards, victualling establishments, arsenals, and barracks, respectively; nor shall any of the tenements within the said dockyards, victualling establishments, arsenals, or barracks, or the inhabitants of the same, be liable to be assessed to the rates for watching, paving, or lighting the other parts of the city, borough, or parish within which the same may be respectively situated, unless such tenements or the inhabitants thereof are now or may hereafter become liable to be assessed to any such rates made under or by virtue of

any law or statute now in force; nor shall anything herein contained extend to defeat or affect the authority of the justices of peace which by an Act passed in the second year of his present Majesty's reign, intituled *An Act to amend the laws relating to the business of the civil departments of the navy and to make other regulations for more effectually carrying on the duties of the said departments*, (a) is vested in the commissioners for executing the office of lord high admiral of the United Kingdom \* \* \* (b) in all places and in all matters relating to His Majesty's naval service, and to the stores, provisions, ammunition, and accounts thereof.

XC. *Council to have power to make bye-laws.*] And be it enacted, that it shall be lawful for the council of any borough to make such bye-laws as to them shall seem meet for the good rule and government of the borough, and for prevention and suppression of all such nuisances as are not already punishable in a summary manner by virtue of any Act in force throughout such borough, and to appoint by such bye-laws such fines as they shall deem necessary for the prevention and suppression of such offences: provided that no fine so to be appointed shall exceed the sum of five pounds, and that no such bye-law shall be made unless at least two-thirds of the whole number of the council shall be present: provided that no such bye-law shall be of any force until the expiration of forty days after the same or a copy thereof shall have been sent, sealed with the seal of the said borough, to one of His Majesty's principal secretaries of state, and shall have been affixed on the outer door of the town hall or in some other public place within such borough; and if at any time within the said period of forty days His Majesty, with the advice of his privy council, shall disallow the same bye-law or any part thereof, such bye-law or the part thereof disallowed shall not come into operation: provided also, that it shall be lawful for His Majesty, if he shall think fit, at any time within the said period of forty days, to enlarge the time within which such bye-law, if disallowed, shall not come into force; and no such bye-law shall in that case come into force until after the expiration of such enlarged time.

XCI. *As to breaches of bye-laws.*] And be it enacted, that all the provisions hereinafter contained relative to offences against this Act punishable upon summary conviction shall be taken to apply to all offences committed in breach of any bye-law or regulation made by virtue of this Act.

XCII. *All corporate property and all fines received to be carried to the account of the borough fund.—Payment of debts, &c., salaries of recorder, town clerk, treasurer, and other officers, and election expenses to be paid out of such fund.*] And be it enacted that after the election of the treasurer in any borough the rents and profits of all hereditaments, and the interest, dividends, and annual proceeds of all monies, dues, chattels, and valuable securities belonging or payable to any body corporate named in conjunction with the said borough in the said schedules (A.) and (B.), or to any member or officer thereof in his corporate capacity, and every fine or penalty for any offence against this Act (the application of which has not already been provided for), shall be paid to the treasurer of such borough; and all the monies which he shall so receive shall be carried by him to the account of a fund to be called "the borough fund;" and such fund, subject to the payment of any lawful debt due from such body

(a) 2 & 3 Will. 4, c. 40.

(b) Part of this section is repealed by the Statute Law Revision Act, 1874 (37 & 38 Vict. c. 35).

corporate to any person, which shall have been contracted before the passing of this Act, and unredeemed, or of so much thereof as the council of such borough from time to time shall be required or shall deem it expedient to redeem, and to the payment from time to time of the interest of so much thereof as shall remain unredeemed, and saving all rights, interests, claims, or demands of all persons or bodies corporate in or upon the real or personal estate of any body corporate by virtue of any proceedings either at law or in equity which have been already instituted or which may be hereafter instituted, or by virtue of any mortgage or otherwise, shall be applied towards the payment of the salary of the mayor, and of the recorder and of the police magistrate hereinafter mentioned (c) when there is a recorder or police magistrate, and of the respective salaries of the town clerk and treasurer, and of every other officer whom the council shall appoint, and also toward the payment of the expenses incurred from time to time in preparing and printing burgess lists, ward lists, and notices, and in other matters attending such elections as are herein mentioned, and, in boroughs which shall have a separate court of sessions of the peace as is hereinafter provided, towards the expenses of the prosecution, maintenance, and punishment of offenders, and towards such other sum to be paid by such borough to the treasurer of such county as is hereinafter provided (d), and towards the expense of maintaining the borough gaol, house of correction, and corporate buildings, and towards the payment of the constables, and of all other expenses not herein otherwise provided for which shall be necessarily incurred in carrying into effect the provisions of this Act; and in case the borough fund shall be more than sufficient for the purposes aforesaid, the surplus thereof shall be applied, under the direction of the council, for the public benefit of the inhabitants and improvement of the borough: provided that it shall not be lawful for the council to be elected under the provisions of this Act, in any borough in which the body corporate named in conjunction with the said borough in the said schedules (A.) and (B.), before the time of the passing of this Act shall have contracted any lawful debt chargeable on any tolls or dues belonging or payable to the said body corporate, or to any member or officer thereof in his corporate capacity, or towards the satisfaction whereof such tolls or dues or any part thereof were applicable before the passing of this Act, to alter or reduce the amount to be levied and payable of such tolls or dues, or to grant for any consideration any remission of or exemption from such tolls or dues or any part thereof, unless with the consent in writing under the hands of a majority in number and amount of the creditors to whom such debt is due, until after such debt and all arrears of interest due thereon shall have been fully paid and satisfied; and in case the borough fund shall not be sufficient for the purposes aforesaid, the council of the borough is hereby authorized and required from time to time to estimate, as correctly as may be, what amount, in addition to such fund, will be sufficient for the payment of the expenses to be incurred in carrying into effect the provisions of this Act; and in order to raise the amount so estimated the said council is hereby authorized and required from time to time to order a borough rate in the nature of a county rate to be made within their borough, and for that purpose the council of such borough shall have within their borough all the powers which any justices of the peace assembled at their general or quarter sessions in any county in England have within the limits of their commission by virtue of an Act made in the fifty-fifth year of His late Majesty King George the

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(c) See sects. 99 and 103.

(d) See sect. 114.

Third, intituled *An Act to amend an Act of His late Majesty King George the Second, for the more easy assessing, collecting, and levying of county rates* (a), or as near thereto as the nature of the case will admit, except as is hereinafter excepted; and all warrants required by the said Act to be issued under the hands and seals of two or more justices shall in like case be signed by the mayor, and sealed with the seal of the borough: provided that such council shall not be empowered to receive, hear, or determine any appeal against any such rate; and if any person shall think himself aggrieved by any such rate it shall be lawful for him to appeal to the recorder hereinafter mentioned (b) at the next quarter sessions for the borough in which such rate has been made, or in case there shall be no recorder within such borough, to the justices at the next court of quarter sessions for the county within which such borough is situate or whereunto it is adjacent; and such recorder or justices respectively shall have power to hear and determine the same, and to award relief in the premises, as in the case of an appeal against any county rate; and all such sums levied in pursuance of such borough rate shall be paid over to the account of the borough fund, and, subject to the provisions hereinbefore contained, shall be applied to all purposes to which before the passing of this Act a borough rate or county rate was by law applicable in such borough or county: provided that in every case in which before the passing of this Act any rate might be levied in any borough, or in any parish or place made part of any borough under the provisions of this Act for the purpose of watching solely by day or by night, or for the purpose of watching by day or by night conjointly with any other purpose, it shall be lawful for the council of such borough to levy a watch rate sufficient to raise any sum not greater than the average yearly sum which during the last seven years, or where such rate shall not have been levied during seven years then during such less number of years as such rate shall have been levied, shall have been expended in the maintenance and establishment of watchmen, constables, patrol, or policemen within the district in which such rate was levied, and for that purpose the council shall have all the powers hereinbefore given to the council in the matter of the borough rate; and where any part of any borough shall not at the time of the passing of this Act be within the provisions of the Act authorizing the levy of such rate for watching as aforesaid it shall be lawful for the council from time to time to order that such part, or so much thereof as to the council shall seem fit, shall be rated to the watch rate in like manner as other parts of the borough to be specified in such order, and such watch rate thereupon shall be levied within the part mentioned in such order in like manner as in the other parts of the borough so specified, and all such sums levied in pursuance of such watch rate shall be paid over to the account of the borough fund: provided always, that no such order as last aforesaid shall be made for rating to such watch rate any part of any borough in which at the time of passing this Act such rate as aforesaid shall not be levied, and which is more than two hundred yards distant from any street or continuous line of houses which shall be regularly watched within the borough under the provisions of this Act: provided also, that nothing in this Act contained shall be construed to render liable to the payment of any debt contracted before the passing of this Act by any body corporate any part of the real

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(a) This Act (55 Geo. 3, c. 51) is repealed (except sect. 17, as to the allowance to the county treasurer) by 15 & 16 Vict. c. 81 (s. 1)—“An Act to consolidate and amend the Statutes relating to the Assessment and Collection of County Rates in England and Wales.”

(b) See sect. 103.

or personal estate of the said body corporate which before the passing of this Act was not liable thereto, or to authorize the levy of any rate within any part of any borough for the purpose of paying any debt contracted before the passing of this Act which before the passing of this Act could not lawfully be levied therein towards the payment of the same.

XCIII. *Accounts of receipts and disbursements to be kept, audited, and published.*] And be it enacted, that the treasurer of every borough shall, in books to be kept for that purpose, enter true accounts of all sums of money by him received and paid, and of the several matters for which such sums shall have been received and paid; and the books containing the accounts shall at all seasonable times be open to the inspection of any of the aldermen or councillors of such borough; and all the accounts, with all vouchers and papers relating thereto, shall, in the months of March and September in every year, be submitted by the treasurer of the borough to the auditors hereinbefore provided to be elected (c), and to such member of the council as the mayor shall name on the first day of March in every year, or in case of extraordinary vacancy within ten days next after such vacancy, for the purpose of being examined and audited, from the first day of September in the year preceding to the first day of March, and from the first day of March to the first day of September in the year in which the said auditors were elected and named, and if the said accounts shall be found to be correct, the auditors shall sign the same; and after such accounts shall have been so examined and audited in the month of September in every year, the treasurer shall make out in writing, and shall cause to be printed, a full abstract of his accounts for the year, and a copy thereof shall be open to the inspection of all the ratepayers of such borough, and copies thereof shall be delivered to all ratepayers of such borough applying for the same, on payment of a reasonable price for each copy.

XCIV. *Power of sale and leasing restrained.*] And be it enacted, that it shall not be lawful for the council of any body corporate to be elected under this Act to sell, mortgage, or alienate the lands, tenements, or hereditaments of the said body corporate, or any part thereof, except in pursuance of, some covenant, contract, or agreement *bonâ fide* made or entered into on or before the fifth day of June in this present year, by or on behalf of the body corporate of any borough, or of some resolution duly entered in the corporation books of such body corporate on or before the said fifth day of June, or to demise or lease, except in pursuance of some covenant, contract, or agreement *bonâ fide* made or entered into on or before the said fifth day of June by or on the behalf of such body corporate, or in pursuance of some resolutions duly entered in the corporation books of such body corporate on or before the said fifth day of June, or except in the cases hereinafter mentioned, any lands, tenements, or hereditaments of such body corporate, or any part thereof, or to enter into any new covenant, contract, or agreement (except in the cases hereinafter mentioned (d)) for demising or leasing any such lands, tenements, or hereditaments, or any part thereof, for any term exceeding thirty-one years from the time when such lease shall be made, or if made in pursuance of a previous agreement, then from the time when such agreement shall have been entered into; and in every lease which the said council is not hereby restrained from making there shall (except in the cases hereinafter mentioned (d)) be reserved and made payable during the whole of the term thereby granted such clear yearly rent as to the council shall appear reasonable, without taking

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(c) See sect. 37.

(d) See sects. 95, 96.

any fine for the same: provided nevertheless, that in every case in which such council shall deem it expedient to sell and alienate or to demise and lease for a longer term than thirty-one years, or upon different terms and conditions than those hereinbefore mentioned, any of the said lands, tenements, or hereditaments, it shall be lawful for such council to represent the circumstances of the case to the lords commissioners of His Majesty's treasury; and it shall be lawful for such council, with the approbation of the said lords commissioners, or any three of them, to sell, alienate, and demise any of the lands, tenements and hereditaments of the said body corporate in such manner and on such terms and conditions as shall have been approved by the said lords commissioners: provided always, that notice of the intention of the council to make such application as aforesaid shall be fixed on the outer door of the town hall, or in some public and conspicuous place within the borough, one calendar month at least before such application; and a copy of the memorial intended to be sent to the said lords commissioners shall be kept in the town clerk's office during such calendar month, and shall be freely open to the inspection of every burgess at all reasonable hours during the same.

XCv. *The council of any borough under this Act authorized to renew leases, &c.*] Provided always, and be it enacted, that in all cases in which any body corporate shall on the fifth day of June in this present year have been bound or engaged by any covenant or agreement, express or implied, or have been enjoined by any deed, will, or other document, or have been sanctioned or warranted by ancient usage or by custom or practice, to make any renewal of any lease for years, or for life or lives, or for years determinable with any life or lives at any fixed or determinate or known or accustomed period, or after the lapse of any number of years, or on the dropping of any life or lives, and years determinable after the lapse of any number of years, at a fine certain, or under any special or specific terms or conditions, and also in all cases in which any body corporate shall theretofore have ordinarily made renewal of any lease for years, or for life or lives, or for years determinable with any life or lives at any fixed or determinate or known or accustomed period, or after the lapse of any number of years, or upon the dropping of any life or lives, upon the payment of an arbitrary fine, it shall be lawful for the council of such borough to renew such lease for such term or number of years, either absolutely or determinable with any life or lives, or for such life or lives, and at such rent, and upon the payment of such fine or premium, either certain or arbitrary, and with or without any covenant for the future renewal thereof, as such body corporate could or might have done in case this Act had not been passed.

XCvi. *Leases of certain buildings, and of ground for building on, or for making gardens, &c., may be made for seventy-five years.*] Provided nevertheless, and be it enacted, that in any of the instances hereinafter mentioned it shall be lawful for the council from time to time to demise and lease, or to enter into any contract or agreement for demising and leasing, any of the said lands, tenements, or hereditaments, to any person, body politic, corporate, or collegiate, for any term not exceeding seventy-five years from the time of making such lease or agreement; (that is to say), of tenements or hereditaments the greater part of the yearly value of which shall at the time of making the lease or agreement consist of any building or buildings, of land or ground proper for the erection of any houses or other buildings thereupon, with or without gardens, yards, curtilages, or other appurtenances

to be used therewith, and, where the lessee or intended lessee shall covenant or agree to erect a building or buildings thereon of greater yearly value than such land or ground, of land or ground proper for gardens, yards, curtilages, or other appurtenances to be used with any other house or other building erected or to be erected on any such ground, belonging either to such body corporate or to any other proprietor, or proper for any other purpose calculated to afford convenience or accommodation to the occupiers of any such house or building.

*XC VII. Collusive purchases, sales, and demises of corporate property since the 5th June, 1835, for undue consideration, may be set aside (a).*

*XC VIII. His Majesty's commission may be issued for certain persons to act as justices in any of such boroughs (b).]* And be it enacted, that it shall be lawful for His Majesty from time to time to assign to so many persons as he shall think proper His Majesty's commission to act as justices of the peace in and for each borough, and in and for each of the counties of cities and towns respectively named in the said schedule (A.), and in and for such of the boroughs in the said schedule (B.) to which His Majesty may be pleased upon the petition of the council thereof to grant a commission of the peace: provided nevertheless, that every person so to be assigned shall reside within the borough for which he shall be so assigned, or within seven miles of such borough, or of some part thereof, during such time as he shall act as a justice of the peace in and for such borough.

*XC IX. Council may make bye-laws, on which the Crown may appoint salaried justices.]* And be it enacted, that if the council of any borough shall think it requisite that a salaried police magistrate or magistrates be appointed within such borough, such council is hereby empowered to make a bye-law fixing the amount of the salary which he or they are to receive in that behalf; and such bye-law so made by any council as aforesaid shall be transmitted to one of His Majesty's principal secretaries of state, and it shall be lawful thereupon for His Majesty, if he shall think fit, to appoint one or more fit persons, according to the number fixed in the said bye-law (being barristers-at-law of not less than five years' standing), to be during His Majesty's pleasure police magistrate or magistrates and a justice or justices of the peace for such borough, and to direct that such sum shall be paid quarterly out of the borough fund of such borough as will be sufficient to pay such yearly salary to each of the justices so assigned as last aforesaid, not exceeding in the whole the salary mentioned in the prayer of such petition, clear of all fees or deductions, as to His Majesty shall seem fit; and the treasurer of such borough shall thereupon pay to each justice so assigned as last aforesaid, out of the borough fund of such borough, the salary so directed to be paid, by four equal quarterly payments, and in the same proportion up to the time of the death of such justice or his ceasing to act under such assignment as aforesaid: provided that in every case of vacancy of the office of police magistrate in any borough aforesaid no new appointment of police magistrate in such borough shall be made until the council shall again make application to one of His Majesty's principal secretaries of state in that behalf, and as in the case of the first appointment of a police magistrate in such borough.

(a) Repealed—Statute Law Revision Act. 1874 (37 & 38 Vict. c. 35).

(b) Amended and explained 24 & 25 Vict. c. 75, ss. 3, 4, *post*.

C. *Council to provide a police office.*] And be it enacted, that the council of every borough to which a separate commission of the peace shall be granted under the provisions of this Act shall be authorized and required to provide and furnish one or more fit and suitable office or offices, to be called "the police office" or "offices" of the borough, for the purpose of transacting the business of the justices of such borough, and to pay from time to time out of the borough fund such sums as may be necessary for providing, upholding, and furnishing, and for the necessary expenses of such police office or offices: provided that no room in any house licensed as a victualling house or alehouse shall be used for the purposes of any such police office.

CI. *Justices need not be qualified by estate.—Service of summonses.—Such justices not to sit in courts of gaol delivery, &c.*] And be it further enacted, that every person assigned to keep the peace within any borough under the provisions of this Act, or any of them, shall, during the continuance of such assignment, execute the duties of a justice of the peace in and for the borough for which he shall have been so assigned, although he may not have such qualification by estate as is required by law in the case of other persons being justices of the peace for a county, provided that such person be not disqualified by law to act as a justice of the peace for any other cause or upon any other account than in respect of estate, and although such person may not be a burgess of the borough in and for which he shall have been assigned to act as a justice of peace; and that every summons for the appearance of any person, or warrant to compel such appearance, or warrant for the apprehension of any person charged with any offence, or search warrant, issued by any justice of the peace acting in and for any borough in any matter within his jurisdiction, may be respectively served and executed within any county in which the said borough shall be situated, or within any distance not exceeding seven miles from such borough, and within such limits as aforesaid shall have the same force and effect as if the same had been originally issued or subsequently indorsed by a justice of the peace having jurisdiction in the place where the same shall be served or executed, any law, statute, charter, or usage to the contrary notwithstanding; and every such summons and warrant shall and may be lawfully served or executed within such limits as aforesaid by the constable or special constable to whom the same shall be directed: provided nevertheless, that no such person, by virtue of such assignment, shall act as a justice of the peace at any court of gaol delivery or general or quarter sessions, or in making or levying any county rate, or rate in the nature of a county rate.

CII. *Justices to appoint a clerk.*] And be it enacted, that it shall be lawful for the justices of every borough to which a separate commission of the peace shall be granted as aforesaid, at their first or any other meeting, and they are hereby respectively required to appoint a fit person to be the clerk to the justices of such borough, to be removable at their pleasure, and so as often as there shall be a vacancy in the said office of clerk to the justices by death, resignation, removal, or otherwise (a).

CIII. *His Majesty may grant a separate court of quarter sessions and appoint a recorder, in certain boroughs.—Council to appoint clerk of the peace.*] And be it enacted, that the council of every borough which shall be desirous that a separate court of quarter ses-

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(a) Proviso as to persons disqualified from holding the appointment repealed—24 & 25 Vict. c. 75, s. 6, and new provision enacted; *post*.



sions of the peace shall be or continue to be holden in and for such borough shall signify the same by petition to His Majesty in council, setting forth the grounds of the application, the state of the gaol, and the salary which they are willing to pay to the recorder in that behalf; and it shall be lawful for His Majesty, if he shall be pleased thereupon to grant that a separate court of quarter sessions of the peace shall be thenceforward holden in and for such borough, to appoint for such borough, or for any two or more of such boroughs conjointly, a fit person, being a barrister-at-law of not less than five years' standing, who shall be and be called the recorder of such borough or boroughs, and shall hold such office during his good behaviour, and upon any vacancy in any such office to appoint another fit person, being a barrister-at-law of not less than five years' standing, to be the recorder in the place of the person so making such vacancy; and the council of every such borough shall appoint a fit person to be clerk of the peace during his good behaviour; and the recorder for the time being of any borough shall be a justice of the peace of and for such borough, although he may not have such qualification by estate as is required by law in the case of any other person being a justice of the peace for a county; and such recorder shall have precedence in all places within the borough of which he may be the recorder next after the mayor thereof; and in such case it shall be lawful for His Majesty to direct that an annual salary, not exceeding the sum stated in the petition of the council, shall be paid to such recorder, by the treasurer of such borough out of the borough fund: provided always, that no person being such recorder as aforesaid shall be eligible to serve in parliament for such borough, nor shall he be an alderman, councillor, or police magistrate of such borough: provided nevertheless, that nothing in this Act contained shall be construed to disqualify any such recorder from being appointed a barrister to revise any list of voters under the provisions of an Act passed in the second year of His Majesty, intituled *An Act to amend the representation of the people in England and Wales* (b), or from being eligible to serve in parliament, otherwise than is hereinbefore provided (c).

CIV. *Recorder and justices to make declaration before acting.*] Provided nevertheless, and be it enacted, that no recorder or person assigned to keep the peace within any such borough shall be capable of acting as recorder or justice of the peace within such borough until he shall have taken the oaths provided to be taken by justices of the peace (d), except the oath as to qualification by estate, and until he shall have made before the mayor or before any two or more of the aldermen or councillors of such borough (who is and are hereby authorized and required to administer the same) a declaration in the following form: (that is to say),

"I A. B. do hereby declare, that I will faithfully and impartially execute the office of recorder [or justice of the peace] for the borough of — according to the best of my judgment and ability."

CV. *Sessions of the peace to be held for the borough, of which the recorder to be the sole judge.*] And be it enacted, that the recorder of every borough shall hold once in every quarter of a year, or at such other and more frequent

(b) 2 Will. 4, c. 45.

(c) The remainder of this section, as to the continuance of existing recorders, and the appointment of deputies, is repealed by the Statute Law Revision Act, 1874 (37 & 38 Vict. c. 35), fresh provisions having been made, by 6 & 7 Vict. c. 89, s. 7; and 7 & 8 Vict. c. 93, ss. 78.

(d) See 31 & 32 Vict. c. 72, post.

shall think fit to direct, a court of quarter sessions (a) of the peace in and for such borough, of which court the recorder of the borough shall sit as the sole judge; and such court of quarter sessions of the peace shall be a court of record, and shall have cognizance of all crimes, offences, and matters whatsoever cognizable by any court of quarter sessions of the peace for counties in England, and the said recorder shall have power to do all things necessary for exercising such jurisdiction, notwithstanding his being such sole judge, as fully as any such last-mentioned court: provided nevertheless, that no recorder, by virtue of his office, shall have power to make or levy any county rate, or rate in the nature of a county rate, or to grant any license or authority to any person to keep an inn, alehouse, or victualling house, to sell excisable liquors by retail, or to exercise any of the powers herein specially vested in the council of such borough.

*CVI. Mayor, in the absence of the recorder and deputy-recorder, may open and adjourn the court.*] And be it enacted, that in the absence of the recorder and deputy recorder the mayor shall be authorized and required, at the proper times appointed for the holding of such court of quarter sessions of the peace in and for such borough, to open the said court, and to adjourn over the holding of the same, and to respite all recognizances conditioned for appearing at the same, until such further day as such mayor then and there, and so from time to time, shall cause to be proclaimed: provided nevertheless, that nothing in this Act contained shall authorize or require any such mayor to sit as a judge of the said court for the trial of offenders, or to do any other act in the character of a judge of such court, save only in opening and adjourning the same, and respiting the said recognizances in manner aforesaid.

*CVII. Capital jurisdictions, and all other criminal jurisdictions in boroughs, other than are specified in this Act, abolished.*] And be it enacted, that after the first day of May one thousand eight hundred and thirty-six all powers and jurisdictions to try treasons, capital felonies, and all other criminal jurisdictions whatsoever granted or confirmed by any law, statute, letters patent, grant, or charter whatsoever, to any mayor, bailiff, alderman, recorder, or other corporate or chartered justice of the peace whomsoever, in any borough, and all right of any body corporate in any borough, or any of the members thereof, by virtue of any law, statute, letters patent, grant or charter whatsoever, to elect or nominate any justices to keep the peace in or for any borough, or by any members of any such corporate body to act as such justices of the peace in and for any of the last-named boroughs other than is herein declared, shall cease (b).

*CVIII. Chartered admiralty jurisdictions abolished.* — *Jurisdiction of the Cinque Ports not affected.*] And be it enacted, that from and after the passing of this Act so much of all laws, statutes, and usages, and so much of all royal and other charters, grants, and letters patent heretofore granted to any borough or body corporate, whereby such borough, or any place within the precincts or liberties of the same, or such body corporate, or the freemen or inhabitants of the same, claims or claim to be exempted and released from the jurisdiction and office of the lord high admiral of England, or of the high court of the admiralty of England,

(a) If the court is held at "more frequent times" this would be rather a misnomer.

(b) The remainder of this section is repealed by the Statute Law Revision Act, 1874 (37 & 38 Vict. c. 35).

or whereby any body corporate, or any mayor, bailiff, recorder, steward, or other chartered or corporate officer of any borough has or claims anything belonging to the office of admiral, whether or not to be exercised by virtue of any commission to them or any of them to be directed, shall be and the same is hereby repealed: provided nevertheless, that nothing in this Act contained shall extend to alter or affect the jurisdiction and office of the lord warden in his office of admiral of the Cinque Ports: provided also, that all suits and matters wherein before the passing of this Act the rights of any salvors, or any droits or perquisites to the office of admiral belonging, were drawn into question, may be continued, heard, determined, and adjudicated upon in like manner as if this Act had not passed.

CIX. *Certain exceptions in 38 Geo. 3, c. 52, repealed.*—*Trial of offences committed in counties of cities and towns corporate.*] And whereas an Act was passed in the thirty-eighth year of his late Majesty George the Third, intituled *An Act to regulate the trial of causes, indictments and other proceedings which arise within the counties of certain cities and towns corporate within the kingdom*, but certain cities and counties of cities were excepted out of the operation of the same: and whereas it is expedient to repeal in part the said exceptions; be it therefore enacted, that so much of the last-recited Act as provides that nothing therein contained shall extend or be construed to extend to the city or county of the city of Bristol, or the city or county of the city of Chester, or to the criminal jurisdiction of the city of Exeter and county of the same city, shall be and the same is hereby repealed; and that the town of Berwick-upon-Tweed shall be taken to be a county of a town corporate, and to be within all the provisions of the last recited Act; and that after the 1st day of May in the year one thousand eight hundred and thirty-six, and until his Majesty shall be pleased to direct a commission of oyer and terminer and gaol delivery to be executed within any county of a city or town corporate, all bills of indictment for offences committed within such county of a city or town corporate shall be preferred and all proceedings upon such indictments shall be had as in the last-recited Act is authorized to be done, and the counties of the cities and towns corporate named in the first column of the schedule (C.) to this Act annexed shall be considered as next adjoining to the county named in conjunction with the same respectively in the second column of the said schedule (C.)

CX. *Offenders committed to borough sessions whose jurisdiction is taken away to be tried in the adjoining county (c).*

CXI. *County justices to have jurisdiction in all boroughs which have not a separate court of quarter sessions of the peace under this Act.*] And be it enacted, that after the said first day of May one thousand eight hundred and thirty-six the justices assigned or hereafter to be assigned to keep the peace in and for the county in which any borough is situated, to which His Majesty shall not have granted that a separate court of quarter sessions of the peace shall be holden in and for the same, shall exercise the jurisdiction of justices of the peace in and for such borough as fully as by law they and each of them can or ought to do in and for the said county; and no part of any borough in and for which a separate court of quarter sessions of the peace shall be holden shall be within the jurisdiction of the justices of any times as the said recorder in his discretion may think fit, or as His Majesty

county from which such borough before the passing of this Act was exempt, any law, statute, letters patent, charter, grant, or custom to the contrary notwithstanding.

CXII. *Certain boroughs not to be assessed to county rates.*] And be it enacted, that within ten days after the grant of a separate court of quarter sessions of the peace to any borough the council of such borough shall send a copy of such grant, sealed with the seal of the borough, to the clerk of the peace of the county in which such borough or any part thereof is situated; and after the grant of such court to any borough it shall not be lawful for the justices of the peace of any county wherein such borough or part of such borough is situate to assess any messuages, lands, tenements, or hereditaments within such borough to any county rate thereafter to be made, but every part of every such borough shall thenceforward be wholly free and discharged from contributing, otherwise than is hereinafter provided (a), to any rate or assessment of any kind of and for the county in which any part of such borough is situated: provided, nevertheless, that all arrears of such rates theretofore made may be levied and collected as if this Act had not been passed.

CXIII. *Boroughs to pay the expenses of prosecutions at the assizes.*] And whereas by an Act made in the seventh year of His late Majesty George the Fourth, intituled, *An Act for improving the Administration of Criminal Justice in England and Wales* (b), it was enacted that all sums directed to be paid by virtue of that Act in respect of felonies and misdemeanors therein enumerated, committed in liberties, franchises, cities, towns, and places which do not contribute to the payment of any county rate, should be paid as therein is directed: be it therefore enacted, that all sums directed to be paid by virtue of the last-recited Act in respect of felonies and such misdemeanors as aforesaid, committed or supposed to have been committed in any borough in which a separate court of quarter sessions of the peace shall be holden, shall be paid out of the borough fund of such borough, any thing in the said Act contained notwithstanding; and the order of court shall in every such case be directed to the treasurer of such borough instead of the treasurer of the county.

CXIV. *Treasurers of counties to keep an account of expenses of prosecution of offenders sent by such boroughs for trial at the assizes, and make order on them for payment thereof.*] And be it enacted, that the treasurer of any county in England and Wales shall keep an account of all costs arising out of the prosecution, maintenance, and punishment, conveyance and transport of all offenders committed for trial to the assizes in such county from any borough in which a separate court of quarter sessions of the peace shall be holden; and the treasurer of every such county shall, not more than twice in every year, send a copy of the said account to the council of each of the said boroughs, and shall make an order for payment of the same on the council of such borough; and the council of every such borough shall forthwith order the same, with all reasonable charges of making and sending such account, to be paid to the treasurer of such county out of the borough fund; and in case any difference shall arise concerning the said account, it shall be decided by the arbitration of a barrister to be named as is provided in the case of differences with respect to the payment of monies under contracts made by authority of an Act made in the fifth year of his late Majesty King George the Fourth, intituled, *An Act for amending an Act of the last session of parliament, relating to the building, repairing,*

(a) See sect. 117.

(b) 7 Geo. 4, c. 64, s. 25.

*and enlarging of certain gaols and houses of correction and for procuring information as to the state of all other gaols and houses of correction in England and Wales (a) :* provided that nothing herein contained shall be construed to alter or restrain the powers given by the last-mentioned Act of contracting with the justices of the peace having authority or jurisdiction in and over any gaol or house of correction of the county wherein or where such borough is situated, or whereto it is adjacent, for the conveyance, support, and maintenance in such last-mentioned gaol or house of correction of prisoners committed thereto from such borough, save only that all such powers shall, after the first day of May one thousand eight hundred and thirty-six, be vested in the council of such borough, in the name of the body corporate whose council they are, and in none other; and for the purpose of making such contracts as aforesaid the council of such borough and none other, shall have power to make the orders required by the said last-mentioned Act to be made by the justices of the borough at the borough sessions.

CXV. *Council may contract for committing prisoners to the gaol of another borough, if sufficient (b).*

CXVI. *Council of certain boroughs to have the same powers under the Acts 4 Geo. 4, c. 64, and 5 Geo. 4, c. 85, as justices of the peace have at their sessions in counties (b).*

CXVII. *Boroughs to pay a proportion of the other county expenditure.]* And be it enacted, that the treasurer of every county in England and Wales shall keep an account of all sums of money received in aid or on account of the county rate, and of the sum of money expended out of the county rate for other purposes than the costs arising out of the prosecution, maintenance, and punishment, conveyance and transport of offenders committed for trial in such county, and in the case of boroughs having a separate court of quarter sessions of the peace other than out of coroners' inquests, and shall, not more than twice in every year, send a copy of the said account to the council of every borough situate within such county in which a separate court of quarter sessions of the peace shall be holden, and which before the passing of the said Act, intituled *An Act to settle and describe the divisions of counties and the limits of cities and boroughs in England and Wales, so far as respects the election of members to serve in parliament (c)*, was chargeable with or liable to contribute in whole or in part to the county rate of such county, and shall make an order on the council of every such borough for the payment of such proportion of such sum as would have been chargeable, after deducting all sums of money received in aid of the county rate as aforesaid, if this Act had not passed, upon such borough as the same shall be bounded according to the provisions of this Act; and the council of such borough shall forthwith order the same, with all reasonable charges of making and sending the said account, to be paid to the treasurer of such county out of the borough fund: provided that in case any difference shall arise concerning the last-mentioned account it shall be decided by the arbitration of a barrister to be named as is provided in the case of differences with respect to the payment of moneys under contracts made by authority of the said Act made in the fifth year of His late Majesty King George the Fourth, intituled *An Act for amending an Act of the last session of parliament, relating to the building, repairing*

<sup>\*</sup> (a) 5 Geo. 4, c. 85, repealed by 28 & 29 Vict. c. 126, sched. 3, *post*.

(b) Repealed, 28 & 29 Vict. c. 126, s. 73.—“The Prison Act, 1865,” and other provisions enacted, ss. 22—32; *post*.

(c) 2 & 3 Will. 4, c. 64.

*and enlarging of certain gaols and houses of correction, and for procuring information as to the state of all other gaols and houses of correction in England and Wales (a).*

CXVIII. *Borough courts of record to be holden as heretofore, but in certain cases with extended jurisdiction.*] And be it enacted, that in every borough in which by charter or custom there is or ought to be holden a court of record for the trial of civil actions not regulated by the provisions of any local Act of parliament, or in which, at the time of the passing of this Act, a barrister of five years' standing shall not act as judge or assessor (b), the recorder, or in the absence of the recorder, or in case there shall not be a recorder, such officer of the borough as by the charter constituting such court or by custom shall be the judge of such court, shall continue to be and act as such judge; and the council of such borough in every case, whether such court be regulated by the provisions of a local Act of parliament or otherwise, shall have power for that purpose to appoint the necessary officer, other than the recorder, before whom such court is to be holden; and every such judge or assessor, other than the mayor, shall hold his office during his good behaviour; and the judge of every such court shall hold the said court at such times (c) and places, and with such rules of practice, and with the same powers and jurisdiction as belonged to the said court at the time of passing this Act: provided always, that in every case in which such court had not before the passing of this Act authority to try such actions as are hereinafter next mentioned any such court in which a barrister of five years' standing shall act as judge or assessor shall have authority to try actions of assumpsit, covenant, and debt, whether the debt be by specialty or on simple contract, and all actions of trespass or trover for taking goods and chattels, provided the sums or damages sought to be recovered shall not exceed twenty pounds, and all actions of ejectment between landlord and tenant wherein the annual rent of the premises of which possession is sought to be recovered shall not exceed twenty pounds, and upon which no fine shall have been reserved or made payable: provided also that every such judge respectively from time to time may make rules for regulating the practice of such court over which he presides, but so that no such rules shall be of force until they shall have been allowed and confirmed by three or more judges of the superior courts of common law at Westminster: provided also, that the jurisdiction of every court of record for the trial of civil actions within any borough shall be extended so far as the metes and bounds of every such borough as the same shall be and be declared under the provisions of this Act (d): provided also, that no action shall be tried by any such judge, wherein the title to land, whether freehold, copyhold, or leasehold, or other tenure whatsoever, or to any tithe, toll, market, fair, or other franchise shall be in question, in any court which before the passing of this Act had not authority to try actions in which such titles as last aforesaid were in question; and in case it shall appear in the course of any action in such court as last aforesaid, or shall be made to appear upon oath to such court as last aforesaid, that any such title as last aforesaid is in question in such action, that then the jurisdiction of such court as last aforesaid in the matter of such action shall cease, and it shall be in the discretion of the court to award costs against the party commencing the same.

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(a) 5 Geo. 4, c. 83.

(b) See 6 & 7 Will. 4, c. 105, s. 9, *post*.

(c) See 2 & 3 Vict. c. 27, s. 2, *post*.

(d) See 7 Will. 4, and 1 Vict. c. 78, s. 35, *post*.

**CXIX.** *Council to appoint registrar and other necessary officers of the court*]. And be it enacted, that the council of every borough in which there shall be holden a court of record for the trial of civil actions as aforesaid shall appoint a registrar of such court, except in boroughs where the town clerk acts as such registrar, and such other officers and servants as are necessary for carrying on the business and executing the process of such court: provided that no registrar or other officer of such court shall by himself or any partner, or by his or their clerks, practice as an attorney in such court, nor shall any such partner or clerk act as agent for any other attorney in such court: provided also, that, unless disqualified as herein provided, every attorney of His Majesty's superior courts at Westminster shall have full liberty to practice as an attorney in every such court.

**CXXI.** (e) *Who to be jurors, &c.*] And be it enacted, that every person, being a burgess of any borough wherein there shall be a separate court of sessions of the peace, or a court of record for the trial of civil actions (unless he shall be exempt or disqualified otherwise than in respect of property from serving on juries by virtue of an Act passed in the sixth year of the reign of King George the Fourth, intituled *An Act for consolidating and amending the laws relative to jurors and juries* (f)), shall be qualified and liable to serve on grand juries in such borough, and also upon juries for the trial of all issues joined in any court of quarter sessions of the peace, and in any court of record for the trial of civil actions triable within the borough of which such person shall be a burgess; and the clerk of the peace of every such borough shall give public notice of the time and place of holding every such quarter sessions of the peace, ten days at the least before the holding thereof, and shall, seven days at the least before the holding thereof, cause to be summoned a sufficient number of persons, being qualified and liable as aforesaid, to serve as grand jurors at such sessions; and the clerk of the peace and registrar of the court of record respectively shall also cause to be summoned not less than thirty-six nor more than sixty persons so qualified and liable as aforesaid to serve as jurors at every such sessions, and at the holding of every such court of record for the trial of causes, in case there shall be any cause then to be tried; and such summons shall be made by showing to the person to be summoned, or in case he shall be absent from the usual place of his abode by leaving with some person therein inhabiting, notice under the hand of such clerk of the peace or registrar respectively containing the substance of such summons; and such clerk of the peace shall make out a list of the names of such persons so summoned as grand jurors, and the clerk of the peace and registrar respectively shall also make out a panel of such persons so summoned other than grand jurors, and such list and panel shall respectively contain therein the christian names and surnames, places of abode, and descriptions of the several persons therein named; and if any person, having been duly summoned to attend on any jury, shall not attend in pursuance of such summons, or being thrice called, shall not answer to his name, or after his appearance wilfully withdraw himself from the presence of the court, the court shall impose such fine upon every person so making default (unless some reasonable excuse shall be proved to the satisfaction of the court) as the court shall think meet; and if any person on whom such fine shall be imposed shall refuse to pay the same to the person who shall be authorized by the court to receive the

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(e) Section cxx., relating to then existing suits repealed by the Statute Law Revision Act, 1874, (37 & 38 Vict. c. 35).

(f) 7 Geo. 4, c. 50. See also 33 & 34 Vict. c. 77, s. 9.

same, it shall be lawful for the court, then or at its next sitting, by order of the court signed by the clerk of the peace or registrar respectively, to cause to be levied, by distress and sale of the goods of the person on whom such fine shall have been imposed, every such fine, and the reasonable charges of such distress and sale; and every fine so received shall be paid to the treasurer of the borough, to be by him carried to the account of the borough fund hereinbefore mentioned: provided nevertheless, that no person shall be summoned to serve as a juror at such sessions or court of record oftener than once in one year.

CXXII. *Members of the council, &c., exempt from serving on juries; burgesses of boroughs which have quarter sessions exempt from juries of county quarter sessions.*] And be it enacted, that after the passing of this Act every member of the council for the time being of every borough, and every justice assigned to keep the peace therein, and the treasurer and town clerk for the time being of every such borough, shall be exempt and disqualified from serving on any jury summoned within such borough respectively, and exempt from serving on any jury (a) summoned to serve in the county wherein such borough is situate; and all burgesses of every borough in and for which a separate court of quarter sessions of the peace shall be holden shall be exempt from serving on any jury summoned for the trial of issues joined in any court of general or quarter sessions of the peace in the county wherein such borough is situate.

CXXIII. *All chartered exemptions from serving on juries abolished.*] And be it enacted, that after the passing of this Act no person in any borough shall continue to be exempt from serving on juries in any of the King's courts of record at Westminster, or in the superior courts, civil or criminal, of the counties palatine of Lancaster and Durham, or in any court of assize, *nisi prius*, oyer and terminer, gaol delivery, or sessions of the peace, or in any other of the King's courts, by virtue of any writ, grant, charter, prescription, or otherwise (b).

CXXIV. *Fees payable to the clerk of the peace, clerk to the magistrates, and registrar and officers of the court of record.*] And be it enacted, that the council of every borough shall, and they are hereby required, within six calendar months next after their election, to make and settle a table of the fees which shall be taken by the clerk of the peace in those boroughs in which a separate court of quarter session of the peace shall be holden, and in those boroughs to which a commission of the peace shall have been granted, a table of the fees to be taken by the clerk to the justices, and in those boroughs in which there shall be a court of record, a table of the fees to be taken by the registrar and officers of such court; and such tables of fees shall be submitted to one of His Majesty's principal secretaries of state; and when such tables of fees shall be confirmed and allowed by such secretary of state, either as such table shall have been submitted to him, or with such alterations, additions, or abatements as he shall think proper, the fees therein mentioned may thenceforth be lawfully taken by the person therein named to be entitled thereunto; and it shall be lawful for the council of such borough, from time to time, as occasion may require, to make new tables of fees to be taken instead of the fees contained in the

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(a) Repealed as to exemption or disqualification of councillors from serving on grand juries in certain boroughs. 16 & 17 Vict. c. 79, s. 6, *post*.

(b) Remainder of section repealing 6 Geo. 4, c. 50, repealed by Statute Law Revision Act, 1874 (37 & 38 Vict. c. 35).



tables which shall have been made as aforesaid, which new table shall be confirmed and allowed in the manner hereinbefore mentioned, otherwise the same shall be of no validity; and that until tables of the fees so to be taken in any such borough shall have been made and confirmed as aforesaid it shall be lawful for such clerk of the peace at the quarter sessions for any such borough, and such clerk to the justices, to take the fees authorized by the table for the time being to be taken by the clerk of the peace at the quarter sessions and clerk to the justices respectively for the county within or adjoining to which such borough is situated, and for the registrar and officers of such court of record to take the fees usually taken by them before the passing of this Act.

CXXV. *Tables of fees to be hung up.*] And be it enacted, that the town clerk of every borough shall cause a true copy of the tables of fees in force for the time being to be hung up in a conspicuous part of the room in which the business of his office is transacted, and also in the room wherein the justices of the peace of such borough shall sit for transacting their business, and also in the room wherein the court of quarter sessions of the peace for the borough shall be held, and also in the court of record of the said borough.

CXXVI. *Application of penalties.*] And be it enacted, that when by any Act any penalties or forfeitures are or shall hereafter be made recoverable in a summary manner before any justice or justices of the peace, and by such Act respectively the same are or shall be limited and made payable to His Majesty, or to any body corporate, or to any person whomsoever, save and except the informer, who shall sue for the same, or any party aggrieved, in every such case the same, if recovered and adjudged before any justice of any borough in which a separate court of quarter sessions of the peace shall be holden as aforesaid, shall, notwithstanding anything in such Act respectively contained, be recovered for and adjudged to be paid to the treasurer of such borough for the time being, to the credit and on account of the borough fund of such borough; and no such penalty or forfeiture, or share of such penalty or forfeiture, shall in any case be recovered by or adjudged to be paid to any other person than the said treasurer, unless such person be the informer or the party aggrieved: provided always, that nothing herein contained shall extend to any penalties or forfeitures recovered under any Act relating to the customs, excise, and post-office, or to trade or navigation, or any branch of His Majesty's revenue.

CXXVII. *Limitation of time for prosecution of offences punishable on summary conviction.*] And for the more effectual prosecution of offences punishable upon summary conviction by virtue of this Act, be it enacted, that the prosecution for every such offence shall be commenced within three calendar months after the commission of the offence, and not otherwise; and that where any person shall be charged on the oath of a credible witness with any such offence before a justice of the peace, the justice may summon the party charged to appear before any two justices of the peace acting in and for the borough in which such offence shall have been committed, at a time and place to be named in such summons; and if such party shall not appear accordingly the justices of the peace then and there present (upon proof of the due service of the summons by delivering a copy thereof to the party, or by delivering such copy at the party's usual place of abode to some inmate thereat, and explaining the purport thereof to such inmate), may either proceed to hear and determine the case in the absence of the party, or may issue their warrant for apprehending and bringing such party before them, as they shall think proper.

CXXVIII. *Power to summon witnesses.—No justice to be incompetent on the ground of rateability.*] And be it enacted, that it shall be lawful for any justice of the peace acting in and for any borough to issue his summons requiring any person to appear before any such justices of the peace for the purpose of giving evidence touching any offence against this Act; and if any person so summoned shall neglect or refuse to appear at the time and place appointed by such summons, and no reasonable excuse for his absence shall be proved before the justices of the peace then and there present, or if any person appearing in obedience to such summons shall refuse to be examined on oath touching any such offence by the justices then and there present, every person so offending shall, on conviction thereof before the said justices, or any other justices of the peace, forfeit and pay such sum of money not exceeding five pounds as to the convicting justices shall seem meet \* \* \*(a) and no justice of the peace shall be disabled from acting in the execution of this Act by reason of his being liable to the rate contributing to the borough fund of any borough.

CXXIX. *Payment of penalties; may be levied by distress; or offender imprisoned.*] And be it enacted, that the justices of the peace by whom any person shall be summarily convicted and adjudged to pay any sum of money for any offence against this Act may adjudge that such person shall pay the same either immediately or within such period as the said justices shall think fit; and in case such sum of money shall not be paid at the time so appointed the same shall be levied by distress and sale of the goods and chattels of the offender, with the reasonable charges of such distress; and for want of sufficient distress such offender shall be imprisoned, with or without hard labour, in the common gaol or house of correction, as to the convicting justices shall seem meet, for any term not exceeding one calendar month where the sum to be paid shall not exceed five pounds, and for any term not exceeding two calendar months in any other case (b), the imprisonment to cease in each of the cases aforesaid upon payment of the sum due.

CXXX. *Form of conviction.*] And be it enacted, that the justices of the peace before whom any person shall be summarily convicted of any offence against this Act may cause the conviction to be drawn up in the following form of words, or in any other words to the like effect, as the case may require; (that is to say),

“ — } Be it remembered, that on the — day of — in the year of  
to wit. } our Lord — in the borough of — in the county of — A. O.  
is convicted before us, J. P. and J. J. P., two of His Majesty's justices of  
the peace for the said county [or borough, or otherwise, as the case may be],  
for that the said A. O. did [here specify the offence, and the time and place  
when and where the same was committed, as the case may be]; and we do  
adjudge that the said A. O. shall for the said offence forfeit the sum of —  
and shall pay the same immediately [or shall pay the same on or before the  
— day of —] to — the treasurer for the said borough, to be by  
him applied according to the directions of the statute in that case made  
and provided. Given under our hands the day and year first above  
mentioned.”

(a) Part of this section, rendering ratepayers competent witnesses, repealed by Statute Law Revision Act, 1874 (37 & 38 Vict. c. 35). See 6 & 7 Vict. 85; 14 & 15 Vict. c. 99; and 16 & 17 Vict. c. 83.

(b) See 28 & 29 Vict. c. 127.

CXXXI. *Appeal against convictions under this Act.*] And be it enacted, that any person who shall think himself aggrieved by any summary conviction in pursuance of this Act may appeal to the next court of general or quarter sessions of the peace to be holden not less than twelve days after such conviction for the county or for the borough wherein the cause of complaint shall have arisen, provided that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such sessions, and shall also either remain in custody until the sessions, or enter into a recognizance, with a sufficient surety, before a justice of the peace, within such three days, or at any time during his custody, on giving to the complainant three days' notice in writing of his intention so to do and of the name, description, and place of abode of his proposed surety, conditioned personally to appear at the said sessions, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded; and upon such notice being given and such recognizance entered into the justice before whom the same shall be entered into shall liberate such person if in custody; and the court at such sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs to either party, as to the court shall seem meet, and in case of the dismissal of the appeal or the affirmance of the conviction shall order and adjudge the offender to be dealt with and punished according to the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment.

CXXXII. *No certiorari, &c.—As to informality in warrants, &c.*] And be it enacted, that no conviction, order, warrant, or other matter made or purporting to be made by virtue of this Act shall be quashed for want of form, or be removed by *certiorari* or otherwise into any of His Majesty's courts of record at Westminster; and no warrant of commitment shall be held void by reason of any defect therein, provided that it be therein alleged that it is founded on a conviction, and there be a good and valid conviction to sustain the same; and where any distress shall be made for levying any money by virtue of this Act the distress itself shall not be deemed unlawful, nor the party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceedings relating thereto, nor shall the party distraining be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but the person aggrieved by such irregularity may recover full satisfaction for the special damage, if any, in an action upon the case.

CXXXIII. *Venue in proceedings against persons acting under this Act.*] And for the protection of persons acting in the execution of this Act, be it enacted, that all actions and prosecutions to be commenced against any person for anything done in pursuance of this Act shall be laid and tried in the county where the fact was committed, and shall be commenced within six calendar months after the fact committed, and not otherwise; and notice in writing of such action, and of the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action; and in any such action the defendant may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into court after such action

brought by or on behalf of the defendant; and if a verdict shall pass for the defendant, or the plaintiff shall become nonsuit, or discontinue any such action after issue joined, or if upon demurrer or otherwise judgment shall be given against the plaintiff, the defendant shall recover his full costs as between attorney and client, and have the like remedy for the same as any defendant hath by law in other cases.

CCXXXIV. *Enactment as to Cinque Ports.*] And be it enacted that \* \* \* (a) the recorders, clerks of the peace, and coroners of the said towns and ports [Hastings, Sandwich, Dovor, and Hythe], and ancient town [Rye] respectively, or of such of them to which His Majesty shall grant a separate court of quarter sessions of the peace respectively, shall and may have and exercise the same jurisdiction, powers, and authorities within all places within or subject to the jurisdiction of such courts respectively, as within the said ancient towns and ports and ancient town respectively of which they are or may be appointed recorders, clerks of the peace, or coroners.

CCXXXV. *Jurisdiction of the Cinque Ports further preserved (b).—Proviso as to juries in the Cinque Ports liberties.*] And be it enacted that the justices of the peace of the towns and ports of Hastings, Sandwich, Dovor, and Hythe, and of the ancient town of Rye, or of such of the said towns and ports and ancient town as shall have justices of the peace assigned to them by virtue of this Act, shall and may have and exercise the same jurisdiction, powers, and authorities over offences and matters committed, arising, and happening within the ancient members and liberties not being corporate of such towns and ports and ancient town respectively, as such justices shall and may have and exercise within the towns and ports and ancient town for which they are or may be respectively justices of the peace; and also His Majesty's justices of the peace, acting under the authority of a commission or commissions, issued by virtue of an Act passed in the fifty-first year of the reign of His late Majesty King George the Third, intituled *An Act to facilitate the execution of justice within the Cinque Ports* (c), shall and may have and exercise all the jurisdiction, powers, and authorities given to such justices by such Act of parliament, as well within the members and liberties not being corporate of the said towns and ports and ancient town respectively as within the said towns named in the schedules to this Act being corporate members and liberties thereof, or any of them, or any of the said towns and ports and ancient town which shall not have justices of the peace assigned to them by virtue of this Act: provided always, that nothing herein contained shall affect the liability of all inhabitant householders within any of the members and liberties of the *Cinque Ports* and ancient towns thereof, not being corporate, to serve on juries at quarter sessions as heretofore.

CCXXXVI. *Act not to affect letters patent founding a grammar school at Louth.* Provided always, and be it enacted, that nothing contained in this Act shall alter or affect certain letters patent bearing date in the fifth year of the reign of His Majesty King Edward the Sixth, founding a free grammar school at Louth, in the county of Lincoln, and creating a body

(a) Enactment as to preservation of jurisdiction of the Cinque Ports, repealed and fresh provisions made. 6 & 7 Will. 4, c. 105, s. 10, *post*.

(b) Repealed as to places severed from Dovor under 18 & 19 Vict. c. 48, s. 5, *post*.

(c) 51 Geo. 3, c. 36.

corporate for the management and regulation thereof, and for the benefit of twelve poor persons mentioned in the said letters patent, by the name of the "warden and six assistants of the town of Louth and free school of King Edward the Sixth in Louth;" but that the said warden and assistants shall continue and be a body corporate with perpetual succession under the provisions of the said letters patent, for the management and regulation of the said school and the purposes aforesaid only, and shall remain and be seised of and entitled to all lands, tolls, tenements, and hereditaments now vested in them for the purposes therein mentioned, in the same manner to all intents and purposes as if this Act had not been passed.

**CXXXVII.** *Saving of the rights of the universities of Oxford and Cambridge.*] And be it enacted, that nothing in this Act contained shall be construed to alter or affect the rights or privileges, duties or liabilities, of the chancellor, masters, and scholars of the universities of Oxford or Cambridge respectively, as by law possessed under the respective charters of the said universities or otherwise, or to entitle any person to be enrolled a citizen of the city of Oxford or burgess of the borough of Cambridge, by reason of his occupation of any rooms, chambers, or premises in any of the colleges or halls of the universities of Oxford or Cambridge, or either of them, or to compel any resident member of either of the said universities to accept any office in or under the body corporate of the mayor and citizens of the city of Oxford, or of the mayor and burgesses of the borough of Cambridge, or to authorize the levy of any rate within the precincts of the said universities, or of any of the colleges or halls of the same, which now by law cannot be levied therein.

**CXXXVIII.** *Not to affect jurisdiction over precincts of cathedrals, nor rights of university of Durham.*] And be it enacted, that all the jurisdictions and authorities now exercised in and over the precinct or close of any cathedral shall be continued, as if this Act had not been passed, concurrently with the jurisdiction and authority of the justices of the peace of the borough within which such close is situated; and that nothing herein contained shall affect or interfere with the rights and privileges granted by charter or Act of parliament to the university of Durham.

**CXXXIX.** *In cases where bodies corporate are seised in their corporate capacity of advowsons, &c., the same may be sold as ecclesiastical commissioners may direct.—Vacancy arising before sale to be supplied by bishop of the diocese.*] And be it enacted, that in every case in which any body corporate, or any particular class, number, or description of members, or the governing body of any body corporate, now is or are in their corporate capacity, and not as charitable trustees, according to the meaning and provisions of this Act, seised or possessed of any manors, lands, tenements, or hereditaments whereunto any advowson or right of nomination or presentation to any benefice or ecclesiastical preferment is appendent or appurtenant, or of any advowson in gross, or hath or have any right or title to nominate or present to any benefice or ecclesiastical preferment, every such advowson and every such right of nomination and presentation shall be sold at such time and in such manner as the commissioners appointed by His Majesty to consider the state of the established church in England and Wales with reference to ecclesiastical duties and revenues may direct, so that the best price may be obtained for the same; and it shall be lawful for the council of such body corporate, and they are hereby authorized and required, with the consent of the said commissioners or any three or more of

them, in writing under their hands, to convey and assure under the common seal of such body corporate such advowson or such right of nomination or presentation as aforesaid to the purchaser or purchasers thereof respectively, his or their heirs, executors, administrators, and assigns, or to such uses as he or they shall direct; and the proceeds of every such sale shall be paid to the treasurer of the borough, whose receipt shall be a sufficient and effectual discharge to the purchaser or purchasers to whom the same shall be given for the amount of his or their purchase money, and shall be by him invested in government securities for the use of the body corporate, and the annual interest payable thereon shall be carried to the account of the borough fund: provided always, that in any case of vacancy arising before any such sale shall have taken place and been completed, such vacancy shall be supplied by the presentation or nomination of the bishop or ordinary of the diocese in which such benefice or ecclesiastical preferment is situated.

CXLII. (a). *Interpretation Clauses.*] And be it enacted, that in the construction of this Act the word "borough" shall be construed to mean city, borough, port, Cinque Port, or town corporate, named in one of the said schedules (A.) and (B.); and the words "body corporate" shall be construed to mean body corporate named in one of the said schedules (A.) and (B.); and the word "burgess" shall be construed to mean citizen in the case of a city; and the word "county" shall be construed to mean county, riding, parts, liberty, or division; and the word "trustees" should be construed to mean trustees, commissioners, or directors, or the persons charged with the execution of a trust or public duty, by whatever name they are designated; and the word "parish" shall be construed to mean parish, township, vill, hamlet, chapelry, tithing, district, precinct, or place maintaining its own poor; and the words "overseers of the poor" shall be construed to mean all persons who execute the duties of overseers of the poor; [and that in all things hereinbefore provided to be done, until the first election of councillors in any borough under this Act shall have been declared, the word "mayor" shall be construed to mean the chief officer of a borough, by whatever name he is now called (b)]; and in describing any person or thing, any word importing the singular number shall be construed to mean also several persons or things respectively, unless there be something in the subject or context repugnant to such construction; and that no misnomer or inaccurate description of any person, body corporate, or place named in any schedule to this Act annexed, or in any roll, list, notice, or voting paper required by this Act, shall hinder the full operation of this Act with respect to such person, body corporate, or place, provided that the description of such person, body corporate, or place be such as to be commonly understood.

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(a) Sects. cxl. and cxli. repealed by Statute Law Revision Act, 1874 (37 & 38 Vict. c. 35.) Sect. cxl. had expired; sect. cxli. empowering the Crown to grant charters of incorporation, had been virtually repealed by 1 Vict. c. 78, s. 49, *post*.

(b) The enactment in brackets is spent, though it is omitted in the Statute Law Revision Act, 1874.

# SCHEDULES TO WHICH THIS ACT REFERS.

## SCHEDULE (A.)—ENGLAND AND WALES.

### *Boroughs which are to have a Commission of the Peace.*

#### SECT. 1.—Parliamentary Boundaries to be taken until altered by Parliament.

Borough.	Wards.	Aldermen.	Councillors.	Style of Corporate Body.
Aberystwith	- 0	4	12	Mayor and burgesses of the town, borough, and liberty of Aberystwith.
Abingdon -	- 0	4	12	Mayor, bailiffs, and burgesses of the borough of Abingdon.
Barnstaple -	- 2	6	18	Mayor, aldermen, and burgesses of the borough and parish of Barnstaple in the county of Devon.
Bath -	- 7	14	42	Mayor, aldermen, and citizens of the city of Bath.
Bedford -	- 2	6	18	Mayor, bailiffs, and burgesses of the town of Bedford.
Berwick-upon-Tweed	3	6	18	Mayor, bailiffs, and burgesses, of the borough of Berwick-upon-Tweed.
Bridgewater -	- 2	6	18	Mayor, aldermen, and burgesses of the borough of Bridgewater.
Bridport -	- 2	6	18	Bailiffs and burgesses of the borough of Bridport.
Bristol -	- 10	16	48	Mayor, burgesses, and commonalty of the city of Bristol.
Bury St. Edmond's	3	6	18	Alderman ( <i>sic</i> ) and burgesses of Bury St. Edmond's in the county of Suffolk.
Cambridge -	- 5	10	30	Mayor, bailiffs, and burgesses of the borough of Cambridge.
Canterbury -	- 3	6	18	Mayor and commonalty of the city of Canterbury.
Cardiff -	- 2	6	18	Bailiffs, aldermen, and burgesses of the town of Cardiff.
Carlisle -	- 5	10	30	Mayor, aldermen, bailiffs and citizens of the city of Carlisle.
Carmarthen -	- 3	6	18	Mayor, burgesses, and commonalty of the borough of Carmarthen.
Carnarvon ( <i>sic</i> ) -	- 2	6	18	Mayor, bailiffs, and burgesses of the town and borough of Caernarvon.
Chester -	- 5	10	30	Mayor and citizens of the city of Chester.

Borough.	Wards.	Aldermen.	Councillors.	Style of Corporate Body.
Chichester -	2	6	18	Mayor, aldermen, and citizens of the city of Chichester.
Colchester -	3	6	18	Mayor and commonalty of the borough of Colchester.
Dartmouth -	0	4	12	Mayor, bailiffs, and burgesses of the borough of Clifton Dartmouth Hardness in the county of Devon.
Denbigh -	0	4	12	Aldermen, bailiffs, and burgesses of the borough of Denbigh.
Derby -	6	12	36	Mayor, aldermen, and burgesses of the borough of Derby.
Devizes -	2	6	18	Mayor and burgesses of the borough of Devizes.
Dorchester -	0	4	12	Mayor, bailiffs, aldermen, and burgesses of the borough of Dorchester in the county of Dorset.
Dovor -	3	6	18	Mayor, jurats, and commonalty of the town and port of Dover.
Durham -	3	6	18	Mayor, aldermen, and commonalty of the city of Durham and Framwelgate.
Evesham -	0	4	12	Mayor, aldermen, and burgesses of the borough of Evesham.
Gateshead -	3	6	18	Boroughholders and freemen of the borough of Gateshead.
Gloucester -	3	6	18	Mayor and burgesses of the city of Gloucester in the county of the city of Gloucester.
Guildford -	0	4	12	Mayor and burgesses of the town of Guldeford ( <i>sic</i> ) in the county of Surrey.
Harwich -	0	4	12	Mayor and burgesses of the borough of Harwich.
Haverfordwest -	0	4	12	Mayor, sheriffs, bailiffs, and burgesses of the county of the town of Haverfordwest, or of the town and county of the town of Haverfordwest.
Hereford -	3	6	18	Mayor, aldermen, and citizens of the city of Hereford.
Hertford -	0	4	12	Mayor, aldermen, and commonalty of the borough of Hertford.
Ipswich -	5	10	30	Bailiffs, burgesses, and commonalty of the town or borough of Ipswich.
Kendal -	3	6	18	Mayor, aldermen, and burgesses of the borough of Kirkby-in-Kendal in the county of Westmorland.
Kidderminster -	3	6	18	High bailiff and commonalty of the borough of Kidderminster in the county of Worcester.
Kingston-upon-Hull -	7	14	42	Mayor and burgesses of the town or borough of Kingston-upon-Hull.



Borough.		Wards.	Aldermen.	Councillors.	Style of Corporate Body.
King's Lynn	-	3	6	18	Mayor and burgesses of the borough of Lynn Regis.
Leeds -	-	12	16	48	Mayor, aldermen, and burgesses of the borough of Leeds in the co. of York.
Leicester -	-	7	14	42	Mayor, bailiff, and burgesses of the borough of Leicester.
Leominster -	-	0	4	12	Bailiffs and burgesses of the borough of Leominster.
Lichfield -	-	2	8	18	Bailiff and citizens of the city of Lichfield.
Liverpool -	-	16	16	48	Mayor, bailiffs, and burgesses of the borough of Liverpool.
Macclesfield	-	6	12	36	Mayor, aldermen, and burgesses of the borough of Macclesfield.
Monmouth -	-	0	4	12	Mayor, bailiffs, and commonalty of the town and borough of Monmouth.
Neath -	-	0	4	12	Portreeve, aldermen, and burgesses of the borough of Neath.
Newark -	-	3	6	18	Mayor and aldermen of the borough of Newark in the county of Nottingham.
Newcastle-under-Lyne	-	2	6	18	Mayor, bailiffs, and burgesses of Newcastle-under-Lyne in the county of Stafford.
Newcastle-upon-Tyne	-	7	14	42	Mayor and burgesses of the town of Newcastle-upon-Tyne in the county of the town of Newcastle-upon-Tyne.
Newport, Monmouth	-	2	6	18	Mayor, aldermen, and burgesses of the borough of Newport.
Newport (Isle of Wight)	-	2	6	18	Mayor, aldermen, and chief burgesses of the borough of Newport in the Isle of Wight in the county of Southampton.
Northampton	-	3	6	18	Mayor, bailiffs, and burgesses of Northampton.
Norwich -	-	8	16	48	Mayor, sheriffs, citizens, and commonalty of the city of Norwich.
Nottingham	-	7	14	42	Mayor and burgesses of the town of Nottingham.
Oxford -	-	5	10	30	Mayor, bailiffs, and commonalty of the city of Oxford in the county of Oxford.
Pembroke -	-	2	6	18	Mayor, bailiffs, and burgesses of the town and borough of Pembroke.
Poole -	-	2	6	18	Mayor, bailiffs, burgesses, and commonalty of the town of Poole.
Portsmouth -	-	7	14	42	Mayor, aldermen, and burgesses of the borough of Portsmouth in the county of Southampton.
Preston -	-	6	12	36	Mayor, bailiffs, and burgesses of the borough of Preston in the county palatine of Lancaster.

Borough.	Wards.	Aldermen.	Councillors.	Style of Corporate Body.
Reading - -	3	6	18	Mayor, aldermen, and burgesses of the borough of Reading in the county of Berks.
Ripon - -	0	4	12	Mayor, burgesses, and commonalty of the borough of Ripon in the county of York.
Rochester - -	3	6	18	Mayor and citizens of the city of Rochester in the county of Kent.
St. Albans - -	0	4	12	Mayor and aldermen and burgesses of the borough of Saint Albans in the county of Hertford.
Sarum, New - -	3	6	18	Mayor and commonalty of the city of New Sarum in the county of Wilts.
Scarborough - -	2	6	18	Bailiffs and burgesses of the town of Scarborough.
Shrewsbury - -	5	10	30	Mayor, aldermen, and burgesses of the town of Shrewsbury in the county of Salop.
Southampton - -	5	10	30	Mayor, bailiffs, and burgesses of the town of Southampton.
Stafford - -	2	6	18	Mayor, aldermen, and burgesses of the borough of Stafford.
Stamford - -	2	6	18	Mayor, aldermen, and capital burgesses of the town or borough of Stamford in the county of Lincoln.
Stockport - -	7	14	42	Mayor, aldermen, and burgesses of the borough of Stockport.
Sudbury - -	0	4	12	Mayor, aldermen, and burgesses of the borough of Sudbury.
Sunderland - -	7	14	42	Mayor, aldermen, and commonalty of the borough of Sunderland.
Swansea - -	3	6	18	Portreeve, aldermen, and burgesses of the borough of Swansea.
Tiverton - -	3	6	18	Mayor and burgesses of the town and parish of Tiverton, in the county of Devon.
Truro - -	2	6	18	Mayor, aldermen, and capital burgesses of the borough of Truro.
Warwick - -	2	6	18	Mayor, aldermen, and burgesses of the borough of Warwick.
Wells - -	0	4	12	Mayor, masters, and burgesses of the city or borough of Wells, in the county of Somerset.
Weymouth and Melcombe Regis	2	6	18	Mayor, aldermen, bailiffs, burgesses, and commonalty of the borough and town of Weymouth and Melcombe Regis, in the county of Dorset.
Wigan - -	5	10	30	Mayor, aldermen, and burgesses of the borough of Wigan.

Borough.	Wards.	Aldermen.	Councillors.	Style of Corporate Body.
Winchester -	3	6	18	Mayor, bailiffs, and commonalty of the city of Winchester.
Windsor -	2	6	18	Mayor, bailiffs, and burgesses of the borough of New Windsor, in the county of Berks.
Worcester -	6	12	36	Mayor, aldermen, and citizens of the city of Worcester.
Yarmouth, Great -	6	12	36	Mayor, aldermen, burgesses, and commonalty of the borough of Great Yarmouth, in the county of Norfolk.

SECT. 2.—Municipal Boundaries to be taken until altered by Parliament.

Andevor -	0	4	12	Bailiff, approved men, and burgesses of the borough of Andevor ( <i>sic</i> ).
Banbury -	0	4	12	Mayor, aldermen, and burgesses of the borough of Banbury, in the county of Oxford.
Beverley -	2	6	18	Mayor, aldermen, and burgesses of the borough of Beverley, in the county of York.
Bewdley -	0	4	12	Bailiffs, burgesses, and inhabitants of the town and borough of Bewdley.
Bideford -	0	4	12	Mayor, aldermen, and capital burgesses of the borough, town, and manor of Bideford, in the county of Devon.
Boston -	3	6	18	Mayor, aldermen, and burgesses of the borough of Boston.
Brecon -	0	4	12	Bailiff, aldermen, and burgesses of the borough of Brecon.
Bridgnorth -	0	4	12	Bailiffs, aldermen, and burgesses of the borough of Bridgnorth.
Clitheroe -	0	4	12	Bailiffs and burgesses of the borough of Clitheroe, in the county of Lancaster.
Chesterfield -	0	4	12	Mayor, aldermen, and burgesses of the borough of Chesterfield.
Congleton -	3	6	18	Mayor, aldermen, and burgesses of the borough of Congleton, in the county of Chester.
Coventry -	6	12	36	Mayor, bailiffs, and commonalty of the city of Coventry.
Deal -	2	6	18	Mayor, jurats, and commonalty of the town of Deal, in the county of Kent.
Doncaster -	3	6	18	Mayor, aldermen, and burgesses of the borough of Doncaster, in the co. of York.
Exeter -	6	12	36	Mayor, bailiffs, and commonalty of the city of Exeter.
Falmouth -	0	4	12	Mayor, aldermen, and burgesses of the town of Falmouth, in the county of Cornwall.

Borough.	Wards.	Aldermen.	Councillors.	Style of Corporate Body.
Grantham - - 0	4	12	Aldermen and burgesses of the town or borough of Grantham.	
Gravesend - - 2	6	18	Mayor, jurats, and inhabitants of the villages and parishes of Gavesend and Melton, in the county of Kent.	
Grimsby - - 0	4	12	Mayor and burgesses of the town of Grimsby, in the county of Lincoln.	
Hastings - - 3	6	18	Mayor, jurats, and commonalty of the town and port of Hastings, in the county of Sussex.	
Kingston-upon-Thames	3	6	18	Bailiffs and freemen of the borough of Kingston-upon-Thames.
Lancaster - - 3	6	18	Mayor, bailiffs, and commonalty of the town of Lancaster, in the county palatine of Lancaster.	
Lincoln - - 3	6	18	Mayor, sheriffs, citizens, and commonalty of the city of Lincoln.	
Liskeard - - 0	4	12	Mayor and burgesses of the borough of Liskerret, otherwise Liskeard, in the county of Cornwall.	
Louth - - 2	6	18	Warden and six assistants of the town of Louth and free school of King Edward the Sixth, in Louth.	
Ludlow - - 0	4	12	Bailiffs, burgesses, and commonalty of the town and borough of Ludlow.	
Maidstone - - 3	6	18	Mayor, jurats, and commonalty of the King's Town and parish of Maidstone, in the county of Kent.	
Maldon - - 0	4	12	Mayor, aldermen and capital burgesses and commonalty of Maldon.	
Newbury - - 0	4	12	Mayor, aldermen, and burgesses of the borough of Newbury.	
Oswestry - - 2	6	18	Mayor, aldermen, common councilmen, and burgesses of Oswestry.	
Penzance - - 2	6	18	Mayor, aldermen, and commonalty of the town of Penzance, in the county of Cornwall.	
Plymouth - - 6	12	36	Mayor and commonalty of the borough of Plymouth.	
Pontefract - - 0	4	12	Mayor, aldermen, and burgesses of the borough or town of Pontefract.	
Richmond - - 0	4	12	Mayor and aldermen of the borough of Richmond, in the county of York.	
Romsey - - 0	4	12	Mayor, aldermen, and burgesses of the town of Romsey Infra, in the county of Southampton.	
St. Ives - - 0	4	12	Mayor and burgesses of the borough of St. Ives.	
Saffron Waldon - 0	4	12	Mayor and aldermen of the town of Saffron Walden, in the county of Essex.	

Borough.	Wards.	Aldermen.	Councillors.	Style of Corporate Body.
Stockton - - 2	6	18	Mayor, aldermen, burgesses, and commonalty of the borough of Stockton.	
Tewkesbury - 0	4	12	Bailiffs, burgesses, and commonalty of the borough of Tewkesbury, in the county of Gloucester.	
Walsall - - 3	6	18	Mayor and commonalty of the borough and foreign of Walsall, in the county of Stafford.	
Welchpool - - 0	4	12	Bailiffs and burgesses of the borough of Poole, in the county of Montgomery.	
Wenlock - - 3	6	18	Burgesses of the borough of Wenlock.	
Wisbech - - 2	6	18	Burgesses of the borough of Wisbech.	
York - - - 6	12	36	Mayor and commonalty of the city of York.	

SCHEDULE (B.)—ENGLAND AND WALES.

*Boroughs which are not to have a Commission of the Peace, unless on Petition and Grant.*

SECT. 1.—Parliamentary Boundaries to be taken until altered by Parliament.

Borough.			Wards.	Aldermen.	Councillors.	Style of Corporate Body.
Arundel	-	-	0	4	12	Mayor and burgesses of the borough of Arundel.
Beaumaris		-	0	4	12	Mayor, bailiff, and burgesses of the borough of Beaumaris.
Cardigan	-	-	0	4	12	Mayor, common council, and burgesses of the town and borough of Cardigan.
Llanidloes	-	-	0	4	12	Mayor and burgesses of the borough of Llanidloes.
Pwllheli	-	-	0	4	12	Mayor, bailiffs, and burgesses of the borough of Pwllheli.
Ruthin	-	-	0	4	12	Aldermen and burgesses of the borough of Ruthin.
Tenby	-	-	0	4	12	Mayor, bailiffs, and burgesses of the borough of Tenby.
Thetford	-	-	0	4	12	Mayor and burgesses of the borough of Thetford.
Totnes	-	-	0	4	12	Mayor and burgesses of the borough of Totnes, in the county of Devon.

Borough.		Wards.	Aldermen.	Councillors.	Style of Corporate Body.
SECT. 2.—Municipal Boundaries to be taken until altered by Parliament.					
Basingstoke	-	0	4	12	Mayor, aldermen, and burgesses of the town of Basingstoke, in the county of Southampton,
Beccles	-	0	4	12	Portreeve, surveyors, and commonalty of the Fen of Beccles, in the co. of Suffolk.
Blandford Forum	-	0	4	12	Bailiff and burgesses of the borough of Blandford Forum in the county of Dorset.
Bodmin	-	0	4	12	Mayor and burgesses of the borough of Bodmin, in the county of Cornwall.
Buckingham	-	0	4	12	Bailiff and burgesses of the borough and parish of Buckingham, in the county of Buckingham.
Calne	-	0	4	12	Guild stewards and burgesses in the borough of Calne.
Chard	-	0	4	12	Portreeve and burgesses of the borough of Chard, in the county of Somerset.
Chippenham	-	0	4	12	Bailiffs and burgesses of the borough of Chippenham, in the county of Wilts.
Chipping Norton	-	0	4	12	Bailiffs and burgesses of the borough of Chipping Norton, in the co. of Oxford.
Daventry	-	0	4	12	Bailiffs, burgesses, and commonalty of the borough of Daventry, in the county of Northampton.
Droitwich	-	0	4	12	Bailiffs and burgesses of the borough of Wych, otherwise Droitwich, in the county of Worcester.
Eye	-	0	4	12	Bailiff, burgesses, and commonalty of the town and burgh of Eye.
Faversham	-	0	4	12	Mayor, jurats, and commonalty of the town of Faversham.
Folkestone	-	0	4	12	Mayor, jurats, and commonalty of the town of Folkestone.
Flint	-	0	4	12	Mayor, bailiffs, and burgesses of the borough of Flint.
Glastonbury	-	0	4	12	Mayor and burgesses of the town of Glastonbury, in the county of Somerset.
Godalming	-	0	4	12	Warden and inhabitants of the town of Godalming.
Godmanchester	-	0	4	12	Bailiffs, assistants, and commonalty of the borough of Cirencester, alias Godmanchester.
Helstone	-	0	4	12	Mayor and commonalty of the borough of Helstone
Huntingdon	-	0	4	12	Mayor, aldermen, and burgesses of the borough of Huntingdon.
Hythe	-	0	4	12	Mayor, jurats, and commonalty of the town and port of Hythe, in the county of Kent.

Borough.		Wards.	Aldermen.	Councillors.	Style of Corporate Body.
Launceston -	-	0	4	12	Mayor and commonalty of the borough of Dunneheved, otherwise Launceston.
Llandovery -	-	0	4	12	Bailiff and burgesses of the borough of Llanymtheverye.
Lyme Regis	-	0	4	12	Mayor and burgesses of the borough of Lyme, in the county of Dorset.
Lymington -	-	0	4	12	Mayor and burgesses of the borough of Lymington.
Maidenhead	-	0	4	12	Mayor, bridgemasters, and burgesses of the town of Maydenheth.
Marlborough	-	0	4	12	Mayor and burgesses of the borough and town of Marlborough, in the county of Wilts.
Morpeth -	-	0	4	12	Bailiffs and burgesses of the borough of Morpeth, in the county of Northumberland.
Penryn -	-	0	4	12	Mayor and burgesses of Penryn, in the county of Cornwall.
Retford, East	-	0	4	12	Bailiffs and burgesses of East Retford, in the county of Nottingham.
Rye -	-	0	4	12	Mayor, jurats, and commonalty of the ancient town of Rye.
Sandwich -	-	0	4	12	Mayor, jurats, and commonalty of the town and port of Sandwich, in the county of Kent.
Shaftesbury	-	0	4	12	Mayor and burgesses of the borough of Shafton, otherwise Shaftesbury, in the county of Dorset.
South Wold	-	0	4	12	Bailiffs, aldermen, and burgesses of the borough of South Wold.
South Molton	-	0	4	12	Mayor and burgesses of the borough and parish of South Molton, in the county of Devon.
Stratford-on-Avon	0		4	12	Mayor, aldermen, and burgesses of the borough of Stratford-upon-Avon.
Tamworth -	-	0	4	12	Bailiffs and commonalty of the borough of Tamworth.
Tenterden -	-	0	4	12	Mayor, jurats, and commons of the town and hundred of Tenterden, in the county of Kent.
Torrington -	-	0	4	12	Mayor, aldermen, and burgesses of the borough and town of Great Torrington, in the county of Devon.
Wallingford	-	0	4	12	Mayor, burgesses, and commonalty of the borough of Wallingford.
Wycombe, Chipping	0		4	12	Mayor, bailiffs, and burgesses of the borough of Chipping ( <i>sic</i> ) Wycombe (otherwise Wicombe) in the county of Buckingham.

## SCHEDULE C.

Berwick-upon-Tweed.	Northumberland.
Bristol.	Gloucestershire.
Chester.	Cheshire.
Exeter.	Devonshire.
Kingston-upon-Hull.	Yorkshire.
Newcastle-upon-Tyne.	Northumberland.

## No. 1.—SCHEDULE D.

The list of burgesses of the borough of — in the parish [or township] of —.

Christian Name and Surname of each Person at full length.	Nature of the Property Rated.	Street, Lane, or other place in this Parish (or Township) where the property is situated for which he is now rated.
Ashton, John - -	Shop - -	No. 23, Church Street.
Bates, Thomas - -	House - -	Brook's Farm.

(Signed)

A. B.  
C. D. }Overseers of the said parish  
[or township].

## No. 2.—NOTICE OF CLAIM.

“To the town clerk of the borough of —.

“I hereby give you notice, that I claim to have my name inserted in the burgess list of the borough of —, that I occupy [*here describe the house, warehouse, counting-house, or shop then occupied by the claimant*] in the borough, and that I have been rated in the parish of — [*here state the parish or several parishes, and the time during which the claimant has been rated in each of them within the borough, necessary for his qualification.*]

“Dated the — day of —, in the year —.

(Signed)

JOHN ALLEN, of [*place of abode*].”

## No. 3.—NOTICE OF OBJECTION.

“To the town clerk of the borough of — [*or to the person objected to, as the case may be.*]

“I hereby give you notice, that I object to the name of Thomas Bates, of Brook's Farm, in the parish of — [*describe the person objected to as*



described in the *burgess list*] being retained on the *burgess list* of the borough of —.

“Dated the — day of —, in the year —.

(Signed) JOHN ASHTON, of [*here state the place of abode and property for which he is said to be rated in the burgess list.*”]

#### No. 4.—LIST OF CLAIMANTS.

“The following persons claim to have their names inserted on the *burgess list* of the borough of —.

Christian Name and Surname of each Claimant.	Nature of the Property for which he is now rated.	Situation of the Property for which he is now rated.	Parish [or Parishes] in which he has been rated, as stated in the Claim.
Allen, John	House	No. 17, High-street.	Rated in the last year in Saint Mary's Parish in the borough, and in the two preceding years in Saint James's Parish in the borough.

(Signed) A. B., Town Clerk.]”

#### No. 5.—LIST OF PERSONS OBJECTED TO.

“The following persons have been objected to as not being entitled to have their names retained on the *burgess list* of the borough of —.

Christian Name and Surname of each Person objected to.	Nature of the Property for which he is now rated.	Situation of the Property for which he is said to be now rated in the Overseer's List.	Parish in which is the Property for which he is now said to be rated in the Overseer's List.
Bates, Thomas	House	Brook's Farm	Saint James'.

(Signed) A. B., Town Clerk.]”

#### SCHEDULE E (a).

(a) Sched. E., enumerating various Acts of Parliament referring to the paving, &c., of different boroughs, is repealed by the Statute Law Revision Act, 1874 (37 & 38 Vict. c. 35).

## 6 &amp; 7 WILL. 4, CAP. CIII.

An Act to make temporary Provision for the Boundaries of certain Boroughs.  
[20th August, 1836.]

*Part of the recited Act (s. 7) repealed.*—*New provision as to boundaries of boroughs, &c.*] Whereas by the provisions of an Act passed in the last session of parliament, intituled *An Act to provide for the regulation of municipal corporations in England and Wales* (a), the boundaries of certain boroughs named in the schedules (A.) and (B.) to the said Act annexed were made to include all the liberties of such boroughs and large tracts of land beyond the limits of the towns, and which ought not to be included therein: be it therefore enacted, &c., that so much of the said Act for regulating corporations as provides that the metes and bounds of every borough and county named in the said Act shall include the whole of the liberties of such borough and county by land and by water is hereby repealed; and that, notwithstanding anything in the said Act contained, no part of any county or of the liberties of any borough, town, or city, named in the first sections of the schedules (A.) and (B.) annexed to the said Act for regulating corporations, which before the passing of the said Act was not part of such borough, town, or city, or within the parliamentary boundary of such borough, town, or city, shall be taken to be within the metes and bounds of any such borough, town, or city, or within the county of such borough, town, or city, or to be within the jurisdiction of the justices of such borough, town, or city, or county of a borough, town, or city; and that no part of any county, or of the liberties of any borough, town, or city, named in the second section of the said schedules (A.) and (B.), which was not part of such borough, town, or city before the passing of an Act passed in the second and third year of His Majesty, intituled *An Act to settle and describe the divisions of counties and the limits of cities and boroughs, in England and Wales, in so far as respects the election of members to serve in parliament* (b), shall, for the purposes of the said Act passed in the last session of parliament, be taken to be within the metes and bounds of any such borough, town, or city, or within the county of such borough, town, or city, or to be within the jurisdiction of the justices of such borough, town, or city, or county of a borough, town, or city, but every such part, until parliament shall otherwise direct, shall be taken to be within and to be subject to the same jurisdiction as the county, riding, parts, or divisions of a county, other than a county of a borough, town, or city, wherein such part is situated or with which it has the longest common boundary: provided also, that all the provisions of the said Act for regulating corporations concerning the liability of the ratepayers of any place or precinct which under the provisions of this Act shall not be included within any such borough, town, or city, or county of a borough, town, or city, to any debt to which the ratepayers of such borough, town, or city, or county of a borough, town, or city, were liable to contribute before the passing of the said Act for regulating corporations, shall be applicable to such place or precinct as if the same had not been included within the metes and bounds of such borough, town, or city under the provisions of the said Act for regulating corporations: provided also, that no election of any mayor, alderman, councillor, auditor, or assessor heretofore made, or any other proceeding whatsoever, in any such borough, town, or city, since the

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(a) 5 & 6 Will. 4, c. 76, *ante*.

(b) 2 & 3 Will. 4, c. 64.

twenty-fifth day of December last, shall be liable to be questioned after the passing of this Act by reason that any such part of any county, or liberties of any borough, town, or city, may or may not have been taken to be part of such borough, town, or city under the provisions of the said Act.

II. *Boundaries of the borough of Sunderland.*] Provided always, and be it enacted, that notwithstanding anything in this Act contained, the borough of Sunderland, for the purposes of the said Act passed in the last session of parliament, and until parliament shall otherwise direct, shall consist of the parish of Sunderland, the townships of Monkwearmouth and Monkwearmouth Shore, and so much of the townships of Bishop Wearmouth and Bishop Wearmouth Panns, as is included within a circle of one mile from the centre of Wearmouth Bridge.

III. *The division of boroughs into wards by the barristers not to be affected by the exclusion of any ward or part of a ward.*] And be it enacted, that the division of every borough, town, and city into wards by the barrister or barristers appointed in pursuance of the provisions of the said Act for regulating corporations shall not be annulled or vitiated by the exclusion of any ward or wards, or any part of any of the said wards which shall be excluded from such borough, town, or city by this Act, but the said division shall remain in all other respects in force until parliament shall otherwise direct, as if the ward or wards, or part of a ward or wards, so excluded from the borough, town, or city, had not been at any time included therein: provided nevertheless, that if any borough, town, or city shall have been so divided into wards, that the whole of any one or more wards shall consist wholly of a district excluded from such borough, town, or city by this Act, the barrister or barristers who originally divided the borough, town, or city into wards shall, as soon as conveniently may be after the passing of this Act, assign the councillors who were chosen in such ward or wards to the remaining wards of the borough, town, or city, or such of them as he or they shall select, upon the same principles, or as nearly as may be, in his or their judgment, as were provided by the said Act for the guidance of the barristers in their assignment of councillors to each ward, and thenceforth, and until parliament shall otherwise direct, the number of councillors in each of the remaining wards shall be the number originally assigned to such ward by the barrister or barristers, with the addition of the number so assigned to it by the barrister or barristers under this Act, and the councillors so assigned under this Act to each ward shall thenceforth be deemed to have been elected in the ward to which they shall have been respectively so assigned, and shall go out of office, and vacancies among them shall be filled at the same time and in the same manner, as if the burgesses of the ward by whom they were originally elected, had been burgesses of the ward to which they shall have been so assigned.

IV. *Local Acts for the relief of the poor not to be affected.*] And be it enacted, that nothing contained in the said Act for regulating corporations shall be construed to affect any local Act heretofore passed for the relief and management of the poor, or to alter the district comprised within the provisions of any such local Act.

V. *Nothing therein to affect the assessments of the land or assessed taxes or the jurisdiction of the commissioners.*] And be it enacted, that nothing contained in the said Act for regulating corporations shall be construed to affect or alter the assessments of the land tax or assessed taxes, or to extend

or diminish the jurisdiction of any commissioners of land and assessed taxes; but that all manors, lands, tenements, and hereditaments, and all parishes and parts of parishes, and places, shall continue to be charged as heretofore towards the land tax charged upon the county or other district of which they were a part before the passing of the said recited Act, and to be subject in that behalf to the jurisdiction of the commissioners of the same county or other district as they would have been if the said recited Act had not been passed.

VI. *Berwick-upon-Tweed declared a county to all intents but for parliamentary elections.*] And be it declared and enacted, that the borough and town of Berwick-upon-Tweed, within the limits assigned to it by the said Act, or hereafter to be assigned to it by authority of parliament, shall be a county of itself to all intents and purposes, except only so far as relates to the return of a member or members to serve in parliament; and that the provisions of the Act passed in the third and fourth years of His Majesty, intituled *An Act for the abolition of fines and recoveries and for the substitution of more simple modes of assurance* (a), and the modes of assurance therein provided shall extend and apply to lands locally situated in the said borough, town, and county, any law, statute, custom, or usage to the contrary notwithstanding.

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6 & 7 WILL. 4, CAP. CIV.

An Act for the better Administration of the Borough Fund in certain Boroughs. [20th August, 1836.]

*New securities may be given for old debts.*] Whereas by an Act passed in the last session of parliament, intituled *An Act to provide for the Regulation of municipal corporations in England and Wales* (b), provision was made for the payment of the rents and profits of the real and personal estate of the mayor, aldermen, and burgesses of certain boroughs named in the schedules (A.) and (B.) to the said Act annexed, and also for the payment of certain penalties to a fund to be called in each case "the borough fund" of that borough; and whereas certain difficulties have occurred in putting the said Act into execution, and certain penalties have been imposed, which ought not to be imposed, for the benefit of the said borough fund: be it therefore enacted, &c., that from and after the passing of this Act it shall be lawful for the council of any borough named in the said schedules to execute from time to time any deed or obligation in the name of the body corporate whose council they are, for securing repayment and satisfaction of any debt or obligation contracted by or on behalf of the said body corporate before the passing of the said Act for regulating corporations.

II. *Extending the power of disposition given to the council as to certain demises; and the power allowed to be exercised over the lands, &c., with the approbation of the treasury.*] And be it enacted, that the power of disposition given to the council of any body corporate in the instances of

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(a) & 4 Will. 4, c. 74.

(b) 5 & 6 Will. 4, c. 76, *ante*.

demises for seventy-five years, authorized by the said Act, shall extend to the demise or lease thereof, either at a reserved rent or a fine or both, as the council shall think fit; and the power of disposition allowed by the Act over the lands, tenements, and hereditaments of such body corporate, to be exercised with the approbation of the lords commissioners of His Majesty's treasury or any three of them shall extend to the disposition of such lands, tenements, and hereditaments, with such approbation as aforesaid, whether by way of absolute sale, or by way of exchange, mortgage, or charge, demise, or lease, and to every other disposition of the same whatsoever which shall be so approved of as aforesaid.

III. *Treasurer of a borough may apply proceeds of sales as herein mentioned.*] And be it enacted, that nothing in the said Act contained shall be construed to restrain the treasurer of any borough, under the direction of the council, from applying the proceeds of the sale of any advowson, or right of nomination or presentation to any benefice or ecclesiastical preferment, directed by the said Act, which shall have been paid to him, or any part thereof, towards the liquidation of any debt contracted before the passing of the said Act by the body corporate named in the said schedules in conjunction with such borough.

IV. *Persons assigned to keep the peace in any borough may act as justices in levying county rates made before May 1836.*] And whereas by the said Act it is provided, that no person assigned to keep the peace within any borough, town, or city under the provisions of the said Act shall by virtue of such assignment act as a justice of the peace in making or levying any county rate, or rate in the nature of a county rate; be it enacted, that, notwithstanding anything in the said Act contained, it shall be lawful for any such person to act as a justice of peace in levying any county rate, or rate in the nature of a county rate, which shall have been legally made previously to the first day of May one thousand eight hundred and thirty-six.

V. *Mayor may issue his warrant for levying borough rate, &c.*] And be it enacted, that in any case in which, for the purpose of levying any county rate, a warrant might be lawfully issued by one or more justices of the peace, a warrant may be lawfully issued in the like case by the mayor of any borough named in the said schedules, under his hand and the corporate seal of the said borough, whether the matter of such warrant relates to the borough rate or to the watch rate; and that in every case in which a matter relating to the county rate a warrant is required to be directed to or issued by a high constable, such warrant may in a like matter relating to the borough rate or watch rate be directed to or issued by the high constable of the borough, or any borough officer of the like description, or by any person or persons who may have been or hereafter be appointed by the council of the borough for the purpose of collecting the said borough rate or watch rate, or either of them.

VI. *Burgesses competent witnesses.*] And be it enacted, that no burgess of any borough named in the said schedules shall be deemed an incompetent witness in any suit or proceeding at law or in equity by reason of his being a member of such body corporate, or interested in the borough fund of any borough.

VII. *Mayor, &c., if enrolled on burgess roll not liable to penalty for so acting.*] And be it enacted, that, notwithstanding any thing in the said

Act contained, no person enrolled on the burgess roll for the time being of any borough named in the schedules to the said Act, and who shall act as mayor, alderman, or councillor, auditor or assessor, of such borough, shall be liable to any penalty for so acting on the ground that he was not entitled to be on the burgess list of such borough.

VIII. *Corporate offices may be resigned on payment of the fine.*] And whereas no provision is made in the said Act for resigning any corporate office on payment of a fine or otherwise; be it enacted, that every person elected into any corporate office in any of the said boroughs may at any time resign such office on payment of the fine which he would have been liable to pay for non-acceptance of the same office: provided that no person enabled by law to make an affirmation instead of taking an oath shall be liable to any fine for non-acceptance of office in any borough by reason of his refusal on conscientious grounds to take any oath or make any declaration required by the said Act, or to take upon himself the duties of such office.

IX. *Reservation of exemption from tolls enjoyed by persons in virtue of other than corporate rights.*] And be it enacted, that nothing contained in the said Act for regulating corporations shall be construed to alter or affect the right of any person claiming discharge or exemption from tolls levied in whole or in part by or to the use of any body corporate by virtue of any title to such discharge or exemption other than as an inhabitant of any borough, or as a citizen, freeman, or burgess, or as a member by any name whatsoever of any body corporate named in the said schedules, or as the widow or kindred of any such inhabitant, citizen, freeman, burgess, or member of such body corporate.

X. *Accounts of corporations to be transmitted to secretary of state, and abstract laid before parliament.*] And be it enacted, that the council of each borough, town, or city named in the said schedules, or in which a body corporate of mayor, aldermen, and burgesses may be created under the provisions of the said Act, shall, before the first day of March in each year, transmit to one of His Majesty's principal secretaries of state a statement of all monies received and expended on account of the mayor, aldermen, and burgesses of that borough, town, or city within the year preceding, which statement shall be prepared in such form and manner as the secretary of state shall direct, and such accounts shall refer to the year ended upon the first of January of the year in which such account is hereby required to be so transmitted; and an abstract of such statements and accounts, under general heads, shall be laid before both houses of parliament during their sitting in the same year in which they are hereby required to be transmitted as aforesaid.

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#### 6 & 7 WILL. 4, CAP. CV.

An Act for the better Administration of Justice in certain boroughs.

[20th August, 1836.]

WHEREAS by reason of certain defects in an Act passed in the last session of parliament, intituled *An Act to provide for the regulation of municipal corporations in England and Wales* (a), the administration of civil and

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(a) 5 & 6 Will. 4, c. 76, ante.

criminal justice is injuriously hindered and delayed in certain boroughs named in the schedules (A.) and (B.) to the said Act annexed: be it therefore enacted, &c.—*County justices may contract with council of a borough in which there is a sufficient gaol for the committal of county prisoners thereto.—If there is a separate court of quarter sessions in the borough such offenders may be tried there (b).*

II. *Power to try prisoners at borough sessions, although committed for trial under contract to a county prison more than two miles from the borough (a).*

III. *Oaths required to be taken by recorder, &c., may be taken before the mayor or two aldermen or councillors.]* And whereas it is by the said recited Act enacted, that no recorder, or person assigned to keep the peace within any such borough shall be capable of acting as recorder or justice of the peace within such borough until he shall have taken the oaths provided to be taken by justices of the peace, except the oath as to qualification by estate: be it enacted, that all oaths so required to be taken by any such recorder or person assigned to keep the peace may be taken before the mayor or any two aldermen or councillors of the said borough, without suing out or obtaining any special dedimus or other commission or authority for administering such oaths.

IV. *Mayor to hold over until acceptance of office by his successor.]* And whereas by the said Act it is provided that the mayor of every borough named in the said schedules (A.) and (B.) shall continue in his office for one whole year: be it enacted, that the mayor of every such borough shall continue in office for one whole year, and until his successor shall have accepted the office of mayor, and shall have made and subscribed the declaration required in that behalf.

V. *Sheriff to be elected on ninth of November instead of first of November (c).* And be it enacted, that so much of the said Act as provides for the appointment of any sheriff on the first day of November in this or any following year is hereby repealed; and that every such appointment of sheriff shall be on the ninth day of November, at the quarterly meeting of the council, and immediately after the election of mayor, and in all other respects according to the provisions of the said Act; and every sheriff appointed under the provisions of the said Act or of this Act shall hold his office until the appointment of his successor.

VI. *Coroner may appoint a deputy in case of illness or unavoidable absence.]* And be it enacted, that in cases of illness or unavoidable absence the coroner for the time being of any borough, town, or city named in the said Act shall be empowered and he is hereby required, by writing under his hand and seal, to appoint a fit person, being a barrister-at-law or an attorney of one of His Majesty's courts at Westminster, and not being an alderman or councillor of such borough, town, or city, to act for him as deputy coroner during the illness or unavoidable absence of such coroner, but no longer or otherwise: provided always, that the mayor or two justices of such borough, town, or city, shall on each occasion certify under their hands and seals the necessity for the appointment of such deputy

(b) Repealed 28 & 29 Vict. c. 126, (Prisons Act, 1865), s. 73, sched. 3, *post*.

(c) See 6 & 7 Will 4, c. 76, s. 61. *ante*.

coroner ; and such certificate shall state the cause of absence of the coroner, and shall be openly read to every inquest jury summoned by such deputy coroner ; and the particulars of every inquest holden before any deputy coroner shall be included in the return to be made by the coroner to the secretary of state, as provided by the said Act.

VII. *Extension of jurisdiction of courts of requests.*] And be it enacted, that in every case in which before the passing of the said Act a court of request or of conscience for the recovery of small debts was established in any borough, town, city, or county of a town or city, the boundary whereof shall have been enlarged by the said Act, the jurisdiction of such court shall be extended to such enlarged boundary : provided nevertheless, that nothing herein contained shall extend to give such court cognizance of any suit which before the passing of this Act could not be brought therein, and could be brought in some other court of conscience or requests.

VIII. *Powers of local Acts heretofore exercised by justices in quarter sessions, and not within the powers of the recorder, vested in the council.*] And be it enacted, that everything provided under any local Act of parliament to be done exclusively by any particular or limited number, class, or description of the members of any body corporate named in the schedules (A.) and (B.) annexed to the said Act for regulating corporations, the continuance of which is not inconsistent with the provisions of the said Act, and also everything provided in any such local Acts to be done by the justices, or by some particular class or description of members of such body corporate, being justices, at some court of general or quarter sessions assembled, and which does not relate to the business of a court of criminal or civil judicature, shall and may be done by the council at some quarterly meeting of the council, or by some committee of the council, or any three or more of such committee to be appointed at a quarterly meeting of the council : provided also, that everything herein authorized to be done at a quarterly meeting of the council may be done at a meeting of the council to be specially summoned for that purpose as soon as may be after the passing of this Act : provided also, that no recorder by virtue of his office shall have power to allow, apportion, make, or levy, or do any act whatsoever with relation to the allowance, apportionment, making, or levying of any rate whatsoever

IX. *Provision for holding courts of record.*] And whereas doubts have arisen as to the provisions of the said Act for regulating corporations respecting judges in borough courts of record for the trial of civil actions not regulated by the provisions of any local Act of parliament, or in which at the time of passing the said Act a barrister of five years' standing did not act as judge or assessor ; be it therefore enacted and declared, that from and after the passing of this Act the recorder, and in the absence of the recorder such person, being a barrister of not less than five years' standing, as shall be appointed by the recorder under his hand and seal to hold the said court, shall be the judge of such court and shall hold the said court at such times as the said recorder in his discretion may think fit, or as His Majesty shall think fit to direct ; and every recorder or person so appointed to hold such court shall be entitled to have such salary paid to him out of the borough fund as the council shall fix by some bye-law to be made in that behalf : provided also, that all rules hereafter to be made for regulating the practice of such courts shall be approved and signed by



the recorder of such borough, if there shall be a recorder, before the same shall be submitted to the judges of the superior courts for allowance and confirmation by them according to the provisions of the said recited Act.

X. *Repeal of part of 5 & 6 Will. 4, c. 76 (s. 134), as to courts of quarter sessions for the Cinque Ports, and new provision made.*] And be it enacted, that so much of the said Act as provides that the courts of quarter sessions of the peace of the towns and ports of Hastings, Sandwich, Dover, and Hythe, and of the ancient town of Rye, or of such of the said towns and ports and ancient town to which His Majesty shall grant a separate court of quarter sessions of the peace, shall have jurisdiction over offences and matters committed, arising, and happening within the towns named in the schedule to the said Act which are ancient corporate members and liberties of the said towns and ports and ancient town respectively, and to which His Majesty shall not grant a separate court of quarter sessions of the peace, and also provides that any or either of the said towns and ports of Hastings, Sandwich, Dover, and Hythe, and ancient town of Rye, to which His Majesty shall not grant a separate court of quarter sessions of the peace, and their or its members and liberties, shall, for all purposes relating to the jurisdiction of courts of quarter sessions of the peace be respectively within the jurisdiction of the courts of quarter sessions of the peace of the nearest other of the said towns and ports or ancient town to which His Majesty shall grant a separate court of quarter sessions of the peace, is hereby repealed: and it is hereby enacted, that, until other provision shall be made by parliament in that behalf, courts of general sessions of the peace and gaol delivery shall and may be holden in and for the said towns and ports of Hastings, Sandwich, Dover, and Hythe, and ancient town of Rye, or such of the said towns and ports and ancient town to which His Majesty shall not grant a separate court of quarter sessions of the peace, and for the ancient members and liberties thereof, not being corporate, and also in and for the towns of Deal, Faversham, Folkestone, and Tenterden, or such of the said towns to which His Majesty shall not grant a separate court of quarter sessions of the peace, before the person who at the time of the passing of the said Act was or acted as recorder or steward or assessor, or by whatsoever other name he was called, of the said towns and ports, ancient town and towns respectively, or in case of his death or resignation or absence, or in case there was no such recorder or steward or assessor, then before any barrister-at-law, of not less than five years' standing, whom His Majesty shall appoint to hold the same, in the same manner in other respects, and with the same powers and authorities, as before the passing of the said Act, except as regards the trial of capital felonies; and so long as such courts of general sessions of the peace and gaol delivery shall be holden the offices of clerk of the peace and coroner shall be holden and exercised by the same persons, or by the same officers of such of the said towns and ports, ancient town and towns respectively, to which His Majesty shall not grant a separate court of quarter sessions, by whom or by which the same were holden at the time of the passing of the said Act, or in case of their death or resignation, or there being no longer such officers, then by such persons as the councils of such towns and ports, ancient town and towns respectively, shall appoint to hold the same, with the same powers and authorities as before the passing of the said Act; [and the non-corporate members and liberties of the said towns and ports of Hastings, Sandwich, Dover, and Hythe, and the said ancient town of Rye, shall and may be chargeable and charged by the courts of general

or quarter sessions of the peace holden for the same respectively with a due proportion of the expenses of such towns and ports and ancient town respectively, and the non-corporate members and liberties thereof, to the payment of which expenses rates in the nature of county rates are applicable, and the same shall and may be assessed and levied in the manner in which rates of that description were assessed and levied before the passing of the said Act; and a due proportion of inhabitant householders to serve as grand jurors and jurors at the courts of general or quarter sessions of the peace of the said towns and ports of Hastings, Sandwich, Dover, and Hythe, and of the said ancient town of Rye, shall be summoned by the clerks of the peace of the said towns and ports and ancient town from the non-corporate members and liberties thereof respectively, and the attendance of such jurors shall be enforced and their defaults punished in the manner by the said Act directed with respect to jurors in boroughs] (a).

XI. *Justices acting under commissions granted by virtue of 51 Geo. 3, c. 36, may exercise all the powers of justices in counties relating to the granting of licenses to victuallers (b).]* And be it enacted, that His Majesty's justices of the peace acting under the authority of a commission or commissions issued by virtue of an Act passed in the fifty-first year of the reign of His late Majesty King George the Third, intituled *An Act to facilitate the execution of justice within the Cinque Ports* shall and may have and exercise all the jurisdiction, powers, and authorities belonging to justices of the peace in counties relating to the granting of licenses or authorities to persons to keep inns, alehouses, or victualling-houses, or to sell excisable liquors by retail, within any of the said towns and ports of Hastings, Sandwich, Dover, and Hythe, and of the ancient town of Rye respectively, which shall not have justices of the peace assigned to them by virtue of the said Act passed in the last session of parliament, and the non-corporate members and liberties thereof, and also within any of the said towns of Deal, Faversham, Folkestone, and Tenterden respectively, which shall not have justices of the peace assigned to them by virtue of the same Act.

XII. *His Majesty may appoint the vice-chancellor of Cambridge University a justice of the borough.]* And whereas doubts have been entertained whether, under the provisions of the said recited Act, it may be lawful for His Majesty from time to time to constitute and appoint the vice-chancellor of the University of Cambridge for the time being a justice of the peace in and for the town and borough of Cambridge: be it therefore enacted, that it shall be lawful for His Majesty, his heirs and successors, from time to time, if His Majesty shall so think fit, in and by his commission of the peace for the said town and borough to constitute and appoint the vice-chancellor of the university for the time being a justice of the peace for the said town and borough, anything in the said recited Act or in this Act to the contrary notwithstanding: provided always, that no vice-chancellor of the said university, by reason of his being named in any commission of the peace for the said town and borough, shall thereby have, as touching the grant of licenses to alehouses, any greater authority as justice of the peace than any other justice of the peace named in any

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(a) The part of sect. 10 included in brackets and the whole of sect. 11 are repealed as to places severed from Dover under 18 & 19 Vict. c. 48; see s. 5, *post*. See also 20 & 21 Vict. c. 1, and 32 & 33 Vict. c. 53; *post*.

(b) See last note.

such commission, but that nothing in this Act shall be construed to alter or in any way to affect the rights and privileges which the vice-chancellor by virtue of his office now lawfully has or enjoys, or might have lawfully had and enjoyed if the vice-chancellor had not been appointed under the provisions of this Act a justice of the peace for the said town and borough.

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7 WILL. 4, AND 1 VICT., CAP. XIX.

An Act to empower the Recorder or other Person presiding in Quarter Sessions in Corporate Cities and Towns, and Justices of the Peace for Counties, Ridings, or Divisions, to divide their respective Courts in certain cases.  
[30th June, 1837.]

WHEREAS in large corporate cities and towns the quarter sessions of the peace may sometimes last beyond three days, and where such is the case considerable inconvenience and increased expense will result from the detention of jurors and witnesses and the unavoidable attendance of a large portion of the municipal police: and whereas for the remedying thereof it is expedient that a similar power of forming a second court to that which is vested in the justices at the general quarter sessions for counties, by virtue of an Act passed in the fifty-ninth year of His late Majesty King George the Third, intituled *An Act to empower magistrates to divide the court of quarter sessions* (c), should be given to the recorder or other person presiding in the court of quarter sessions of corporate cities or towns: be it therefore enacted, &c.:

*Power to the recorder or other person presiding to form a second court and appoint a barrister to preside therein.*] Whenever it shall appear to such recorder or other person presiding as aforesaid that the said quarter sessions are likely to last more than three days, including the day of assembling, it shall and may be lawful for such recorder or other person so presiding, at his discretion, but subject to the provisions hereinafter contained, to order a second court to be formed, and to appoint by writing under his hand and seal a barrister-at-law, of not less than five years' standing, to preside, and try such felonies and misdemeanors as shall be referred to him therein, whilst the said recorder or other person is sitting in such quarter sessions; and for the effectual execution of the powers of this Act, such recorder or other person so presiding shall be empowered in such case to call upon the clerk of the peace, and such clerk of the peace is in such case hereby authorized and required to appoint an assistant, and such recorder or other person shall himself appoint an additional crier for such second court; and such barrister shall be styled "assistant barrister," and shall exercise, for the time being, whilst the said recorder or other person is so sitting as aforesaid, the same powers as are exercised by the said recorder or other person presiding as aforesaid, and subject to the same rules and regulations; and the proceedings so had by and before such assistant barrister shall be as good and effectual in the case to all intents and purposes as if the same were had before the said recorder or other person so presiding as aforesaid, and shall be enrolled and recorded accord-

ingly: provided always, that if at any time during the sitting of such second court the recorder or other person shall be of opinion that it is no longer required, he may direct the assistant barrister, at a proper opportunity, to adjourn the same: provided also, that no such recorder or other person so presiding as aforesaid shall at any time exercise the powers and discretion given by this Act, unless it shall have been theretofore and before each such quarter sessions certified to him under the hand or hands of the mayor or of two of the aldermen of such corporate city or town, that the council of such corporate city or town have resolved that it will be expedient and for the benefit of the inhabitants thereof that the same should be exercised, nor unless the name of the barrister proposed to be appointed, in case such recorder or other person shall in the exercise of such discretion deem such appointment necessary, shall have at some previous time been transmitted to and approved of by one of His Majesty's principal secretaries of state as a fit and proper person to be from time to time so appointed (a).

II. *Remuneration to officers of said second court.*] And be it further enacted, that such assistant barrister shall be entitled to a remuneration of ten guineas per diem for each day that he shall so preside as aforesaid; and such assistant clerk of the peace shall be entitled to a remuneration of two guineas per diem; and such additional crier shall be entitled to a remuneration of half-a-guinea per diem, for such time as they shall execute their respective offices in such second court; and such remuneration shall be paid by the treasurer of the borough out of the borough fund: and the recorder or other person presiding shall grant a certificate to such assistant barrister, such assistant clerk of the peace, and such additional crier respectively, stating the number of days that each shall have executed his several office, and the amount that he is entitled to claim: and such certificate shall be a sufficient authority to the treasurer of the borough to pay the same, and shall be retained by him as a voucher for such payment: provided always, that such assistant barrister, assistant clerk of the peace, or additional crier, shall not in any case be entitled to claim remuneration for more than two days.

III. *Appointments not subject to duty.*] And be it further enacted, that the appointments and certificates authorized and directed by this Act shall not be subject to any stamp duty or other tax whatsoever.

IV. *[Two or more justices at adjourned quarter sessions may sit apart for despatch of business (b).]*

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7 WILL. 4, AND 1 VICT. CAP. LXXVIII.

An Act to amend an Act for the Regulation of Municipal Corporations in England and Wales. [17th July, 1837.]

*Election not to be questioned for title of presiding officers;—provided that the person shall have taken upon himself the office.*] Whereas an Act—

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(a) See as to deputy recorders, 6 & 7 Vict. c. 89, s. 8; 32 & 33 Vict. c. 23; and 35 & 36 Vict. c. 86, s. 7, *post*.

(b) Repealed by 21 & 22 Vict. c. 73, s. 8, *post*.

was passed in the fifth and sixth years of the reign of his present Majesty, intituled *An Act to provide for the regulation of municipal corporations in England and Wales* (c), providing among other things for the election of certain officers in manner and form therein declared, but such elections have not in all cases been duly made according to the provisions of the said Act: and whereas doubts are entertained by and before whom the meetings for such elections can now be convened and holden for the purpose of supplying such deficiencies: and whereas the elections of corporate officers and others are liable to be questioned by reason of any defect that may be in the title of the presiding officer before whom the election may have been had, notwithstanding that the election may have been otherwise good in all respects: for remedy thereof be it enacted, &c., that no election of any person into any corporate office which shall take place after the passing of this Act shall be liable to be questioned by reason of any defect in the title or want of title of the person before whom such election may have been had, provided that the person before whom such election shall be had shall be then in the actual possession of or acting in the office giving the right to preside at such election; and, subject and without prejudice to the provisions for discontinuing proceedings hereinafter contained, all elections into any corporate office since the twenty-fifth day of December in the year one thousand eight hundred and thirty-five, in any borough named in either of the schedules (A.) and (B.) annexed to the said Act for regulating corporations, and all acts duly done in right of their office since the said twenty-fifth day of December by the persons chosen at any such election, and all acts duly done by any person with reference to any such election, shall be good to all intents and purposes, notwithstanding any defect in the title or want of title in the person so presiding arising from the provisions of the said Act or of any former charter or any local custom not having been duly complied with, and notwithstanding that there may not have been at the time of the passing of the said Act any such body corporate as is named in the schedule (A.) or (B.) of the said Act in conjunction with the name of the borough in which such election may have been had, or any such officer as is charged by the said Act with the execution of such duties: provided that the person or persons before whom or by whose authority any such election may have been had or by whom any summons shall have been issued, or list made out or received, or other act done for holding or with reference to any such election, shall have *bond fide* taken upon himself the duties of the office giving right to preside at such election, or issue such summons, or make out or receive such list, or do such act as aforesaid: provided nevertheless, that nothing herein contained shall prevent any such election or act done by any person from being questioned and set aside by reason of any fraud or any irregularity or defect other than is hereinbefore specified: provided also, that nothing in this Act contained shall extend to invalidate any payment *bond fide* made, or to invalidate or render valid any notice to quit given before the passing of this Act, or render liable to any penalty or punishment any person who would not have been liable to such penalty or punishment in case this Act had not been made.

III. (d) *Elections before the election of assessors to be valid.*] And be it enacted, that all elections had before the passing of this Act, or to be had

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(c) 5 & 6 Will. 4. c. 76.

(d) Section ii. is repealed by the Statute Law Revision Act, 1874 (37 & 38 Vict. c. 35).

under this Act, in any borough named in either of the said schedules, at any time before the election of assessors for such borough, shall be as good as if had before the mayor and assessors jointly.

IV. 5 & 6 Will. 4, c. 76, s. 43, in part repealed.—*Two revising assessors to be chosen in like manner as the auditors are.*] And whereas by the said Act it is provided, that in every case in which there shall be a division into wards of any borough the assessor who shall hold the court for revising the burgess lists with the mayor shall be the assessors of the mayor's ward (a); and it may be, in case the mayor be chosen from among the aldermen, that there is no mayor's ward in such borough; be it enacted, that so much of the said Act as provides that the assessors who shall hold the court for revising the burgess lists with the mayor shall be the assessors of the mayor's ward is hereby repealed; and in every borough divided into wards two assessors shall be chosen on the twenty-first day after the passing of this Act, and in every subsequent year on the first day of March, or on the following day if that day be on a Sunday, to hold the court for revising the burgess lists with the mayor in like manner as is provided in the said Act concerning the election of two auditors of such borough (b).

V. *Burgess roll not to be questioned for the want of title of the mayor or assessors.*] And be it enacted, that after the passing of this Act no burgess roll shall be liable to be questioned by reason of any defect of title or want of title of the mayor or assessors by whom the same shall have been revised, or any or either of them, provided that he or they shall have been in the actual possession and exercise of the office of mayor or assessor, as the case may be.

VI. *Burgess roll to be in force until revision of new burgess roll.*] And be it enacted, that in every borough in which by reason of any neglect or informality a new burgess roll of the said borough shall not have been duly made in any year within the time directed by the said Act, the burgess roll which was in force before the time appointed for the revision shall continue in force until such new burgess roll shall have been duly made.

VII. *Corporations not dissolved by neglect to make new burgess roll.*] And be it enacted, that no body corporate named in the schedules of the said Act for regulating corporations, in which no new burgess roll was made in the month of October last, shall therefore be taken to have been dissolved, but every such body corporate shall have and continue to have perpetual succession, and all the rights, powers, privileges, and liabilities which it would have had if the new burgess roll had been duly made (b).

VIII. *As to reckoning a former person's rating and occupancy as part of a subsequent occupier's.*] And be it enacted, that in every case in which, under the provisions of the said Act for regulating corporations, any person shall be entitled to reckon the rating and occupancy of any house, warehouse, counting-house, or shop in any borough by any other person as part of his own rating and occupancy, it shall not be necessary, in support of the title of such person to be enrolled on the burgess roll, to prove that he was

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(a) See 35 & 36 Vict. c. 33, s. 21.

(b) Remainder of section repealed by Statute Law Revision Act, 1874 (37 & 38 Vict. c. 35).

inhabitant householder within the said borough, or within seven miles of the said borough, or that he was an occupant or rated within the same, before the title to such house or other property as aforesaid shall have devolved upon him.

IX. *Rating in name of former occupier sufficient.*] And be it further enacted, that the rating in the name of the person previously occupying shall be considered a sufficient rating of the person so entitled until a new rate shall be made subsequent to such devolution of title as aforesaid.

X. *Provision for certain cases in which there has been equality of votes (c).*

XI. *Provision in lieu of (provision relating to vacancies in the council.)*] And be it enacted, that \* \* \* in every case in which more than one such extraordinary vacancy shall be so supplied (d) the councillor elected by the smallest number of votes shall be taken to be elected in the room of him who would regularly have first gone out of office, and the councillor elected by the next smallest number of votes shall be taken to be elected in the room of him who would regularly have next gone out of office, and so with respect to the other.

XIV. (e) *Manner of electing aldermen* ] And be it enacted, that after the passing of this Act the election of aldermen by the council shall be in manner following; that is to say, every member of the council entitled to vote in that election may vote for any number of persons, not exceeding the number of aldermen, then to be chosen, by personally delivering at such meeting, to the mayor or chairman of the meeting, a voting paper containing the christian name and surname of the persons for whom he votes, with their respective places of abode and descriptions, such paper being previously signed with the name of the member of council voting; and the mayor or chairman of the meeting, as soon as all the voting papers have been delivered to him, shall openly produce and read the same, and immediately afterwards deliver them to the town clerk, to be kept among the records of the borough; and in case of equality of votes among those entitled to vote the mayor or chairman shall have a casting vote, whether or not he may be entitled to vote in the first instance.

XV. *Auditors and assessors disqualified to be of the council.*] And whereas by the said Act for regulating corporations it is to be provided, that no burgess shall be eligible to be or be elected an auditor or assessor who shall be of the council; be it also enacted, that no burgess shall be eligible to be elected a member of the council while holding the office of assessor or elective auditor.

(c) Repealed, Statute Law Revision Act, 1874 (37 & 38 Vict. c. 35).

(d) See 5 & 6 Will. 4, c. 76, s. 47. The proviso at the end of that section, "that after the full number to be regularly elected of the councillors in any year shall have declared their acceptance of office, no new election of councillors shall be made by reason of such extraordinary vacancy, unless the number of councillors remaining after such vacancy shall not exceed two-thirds of the whole number of the council of such borough," was repealed by 7 Will. 4, and 1 Vict. c. 78, s. 11, *supra*; and that portion of the last-mentioned section is now repealed by the Statute Law Revision Act, 1874 (as above).

(e) Sections xii and xiii, which were retrospective, are repealed by the Statute Law Revision Act, 1874 (as above).

XVI. *In case of illness of alderman at election.*] And be it enacted, that in case of the illness or incapacity to act of any alderman at any election, the mayor shall be empowered to appoint another alderman to act in the room of such alderman during such illness or incapacity.

XVII. *Assessor may appoint a deputy.*] And be it enacted, that every assessor shall be empowered and he is hereby directed, as soon as conveniently may be after his election, and from time to time as the occasion may arise or to him may seem fit, to appoint under his hand a deputy to act for him in case of his illness or incapacity to act at any election or any revision of the burgess lists; and every such appointment shall be signified by him in writing under his hand to the council, and shall be recorded on the minutes of their proceedings.

XVIII. *Poll may be closed if an hour has elapsed without a vote being tendered.*] And be it enacted, that at any election under the provisions of the said Act or of this Act it shall be lawful for the presiding officer to close the poll at any time before four of the clock, if one hour shall have elapsed during which no vote shall have been tendered for any candidate: provided that no person or persons have within the last hour been prevented from coming to the poll by any riot, violence, or other unlawful means, of which notice shall have been given to the returning officer.

XXI. (a) *No advantage to be taken under this Act in actions brought by any corporation.*] And be it further enacted, that no advantage shall be taken of the invalidity of any election which shall be rendered valid by this Act in any action already brought or which may be hereafter brought by any corporation, but such action shall be tried on its merits, as if no such objection could be set up against the plaintiff's right of proceeding, but the court in which such action is or shall be brought, or any judge of the same court in vacation, shall, on application of the defendant, if the court or judge think the invalidity of any such election would have been a defence to such action, order the plaintiff in any such action to pay such defendant his costs up to the time of the application, and also his costs of the application, taxed as between party and party.

XXII. *Power to take extracts from minutes, &c.*] And be it further enacted, that from and after the commencement of this Act any burgess of any borough shall be at liberty, at all seasonable times, to make any copy of or take any extract from the book required by the said Act to be kept for the purpose of entering the minutes of council, and also to make any copy or take any extract from any order in council of such borough for the payment of any money; and it shall also be lawful for any alderman or councillor of any borough, at all seasonable times, to make any copy of or take any extract from the book required by the said Act to be kept by the treasurer of such borough.

XXIII. *Proceedings of quo warranto against mayor, &c., to be commenced within twelve months.*] And be it enacted, that after the passing of this Act every application to the Court of King's Bench for the purpose of calling upon any person to show by what warrant he claims to exercise the office of mayor, alderman, councillor or burgess in any borough shall be

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(a) Sections xix and xx repealed, Statute Law Revision Act, 1874 (37 & 38 Vict. c. 35).



made before the end of twelve calendar months after the election or the time when the person against whom such application shall be directed shall have become disqualified, and not at any subsequent time.

XXIV. *Applications may be made to Court of King's Bench for a mandamus to put a burgess on the roll.*] And be it enacted, that it shall be lawful for any person whose claim shall have been rejected or name expunged at the revision of the burgess roll (b) of any of the said boroughs to apply, before the end of term then next following, to the Court of King's Bench for a *mandamus* to the mayor for the time being of that borough to insert his name upon the burgess roll, and thereupon for the court to inquire into the title of the applicant to be so enrolled; and of the court shall award such *mandamus*, the mayor shall be bound to insert the name upon the burgess roll, and shall add thereunto the words "by order of the Court of King's Bench," and shall subscribe his name to such words; and thereupon the person whose name shall be so added to the burgess roll shall be deemed a burgess, and entitled to vote and act as a burgess in all respects as if his name had been put upon the burgess roll by the mayor and assessors; and upon every such application the court shall have power to make such order with respect to the costs as to the court shall seem fit.

XXV. *In case elections are not made within the time appointed by 5 & 6 Will. 4, c. 76, and this Act, the corporations may proceed to such elections on the following day.*] And be it enacted, that after the passing of this Act, in case no election shall be made of any mayor, or any of the aldermen, councillors, or other corporate officers, in any borough named in the said schedules, upon the day or within the time appointed by the said Act for regulating corporations or by this Act for any such election, or such election being made shall afterwards become void, whether such omission or avoidance shall happen through default of the officer or officers who ought to preside at such election, or by any accident or other means whatsoever, the corporation shall not thereby be deemed or taken to be dissolved or disabled from electing such mayor, alderman, or councillor, or other corporate officer, for the future, but in any case where no such election shall be made as aforesaid the election for any such mayor, alderman, councillor, or other corporate officer may be had, held, and proceeded with upon the day next after the day on which such election ought to have been made, unless such day shall happen to be on a Sunday, and then upon the Monday following, and every Act necessary to be done in order to and for the completing such election shall and may be then done, and the same shall be as effectual and valid for all purposes as if the election had been made on the proper day appointed for that purpose.

XXVI. *Powers given to Court of King's Bench under 11 Geo. 1, c. 4 (c), extended to elections under 5 & 6 Will. 4, c. 76, and this Act.*] And be it enacted, that after the passing of this Act all the powers, authorities, and jurisdictions by an Act of the eleventh year of the reign of His late Majesty King George the First, intituled *An Act for preventing the inconveniences arising from want of elections of mayors or other chief magistrates of boroughs or corporations being made upon the days appointed by charter or usage for that purpose, and directing in what manner such elections should*

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(b) This should be "the burgess lists." See 5 & 6 Will. 4, c. 76, ss. 22, 45, *ante*.  
 (c) *Post*, Part II.

*be afterwards made*, given to His Majesty's Court of King's Bench in cases where no election shall be made of the mayor, bailiff and bailiffs, or other chief officer or officers of cities, boroughs, or towns corporate, upon the day or within the time appointed by charter or usage for that purpose, and that no election is made pursuant to the directions in that Act prescribed, or such election being made shall afterwards become void as in that Act mentioned, shall and the same are hereby extended to all cases in which no election shall be made of any mayor, alderman, councillor, or other corporate officer, or other person, to any corporate office on the day or within the time appointed for any such election under the provisions of the said Act of the fifth and sixth years of the reign of His present Majesty for regulating corporations, or of this Act; and the said Court of King's Bench is hereby empowered in all such cases to award a *mandamus*, and to cause such proceedings to be had thereupon, and to make such orders, and to do all other acts, matters, and things in respect thereof, as fully and effectually as the said court is now by law authorized in any other cases of *mandamus* for the election of any officers of corporations; and the election to be held under such *mandamus* shall be held and the proceedings thereon conducted within the borough in the same manner and under the like regulations and provisions as are in the said Act of His Majesty King George the First enacted and provided.

XXVIII. (a) *Money borrowed to discharge any pre-existing debt to be deemed a debt contracted before the passing of 6 & 7 Will. 4, c. 104.*] And whereas by an Act passed in the last session of parliament, intituled *An Act for the better administration of the borough fund in certain boroughs*, it is enacted, that it shall be lawful for the council of any borough named in the schedules (A.) and (B.) annexed to the first hereinbefore mentioned Act, to execute from time to time any deed or obligation in the name of the body corporate whose council they are for securing repayment and satisfaction of any debt or obligation contracted by or on behalf of the said body corporate before the passing of the said Act for regulating corporations; be it enacted, that any money borrowed by any such council for the purpose of being applied and which shall be actually applied in or towards satisfaction and discharge of any such pre-existing debt or obligation shall be deemed and taken to be, within the true intent and meaning of the said Act of the last session of parliament, a debt contracted by or on behalf of such body corporate before the passing of the said Act for regulating corporations.

XXX. (b) *Certain matters of local jurisdiction made cognizable by justices of peace for the county, &c.—6 & 7 Will. 4, c. 103.*] And be it enacted, that all matters cognizable by virtue of any local Act of parliament or otherwise by any justice of the peace or by the general or quarter sessions of the peace having jurisdiction within any place which since the passing of the said Act for regulating corporations, or of an Act passed in the sixth and seventh year of the reign of His present Majesty, intituled *An Act to make temporary provision for the boundaries of certain boroughs*, has ceased, or which under any future Act may cease to be within and to be part of any borough or the liberties thereof, shall be cognizable by the justices of the peace or the general or quarter sessions of the county, riding,

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(a) Section xxvii repealed by the Statute Law Revision Act, 1874 (37 & 38 Vict. c. 35).

(b) Section xxix repealed as above.

or division, liberty or jurisdiction, within which such place is situate, in the same manner and subject to the same provisions as the same were within the jurisdiction of the justices of the peace for that borough or place or of the general or quarter sessions of the same.

XXXI. *Offences against local Acts made cognizable by borough justices.*] And be it enacted, that after the passing of this Act all offences committed within any borough, or the precincts thereof, against the provisions of any local Act of parliament, shall be cognizable by the justices of such borough, and such justices shall possess all the powers and jurisdiction with respect to such offences which were heretofore possessed by the justices of any county, riding, division, liberty, or jurisdiction, by virtue of any such local Act: provided always, that in every case in which imprisonment might be awarded for any such offence, or to enforce payment of any penalty imposed by any such Act, such imprisonment may be awarded to take place in any gaol to which the justices of that borough have power to commit offenders.

XXXII. *Before whom courts of records may be holden.*] And be it enacted, that every court of record for the trial of civil actions within any borough named in the schedules to the said Act for regulating corporations may be in the absence of the recorder be holden for all purposes within the competency of the said court (except the trial of .sues in law or in fact) before any person whom the recorder shall from time to time appoint for that purpose under his hand and seal, such person being a barrister-at-law or attorney of five years' practice.

XXXIII. *Orders, affidavits, &c., now made by or before the recorder, may be made by or before the registrar in absence of the recorder.*] And be it enacted, that all rules, orders, and affidavits, and all other matters and things (except the trial of issues in law or fact), in any way relating to the business of any borough court of record not regulated by local Act of parliament, of which the recorder or his deputy is or hereafter may become the judge or now acts as assessor, which must now by law be made, sworn, or done by or before such recorder or such deputy, or other the judge of the said court, may be made, sworn, or done, either in court or out of court, in the absence of the said recorder or his deputy, by or before the registrar of such court, or such other person, being a barrister-at-law or attorney of five years' standing, as the recorder shall appoint under his hand and seal.

XXXIV. *Recorders to be sole judges of borough courts in which they act as assessors.*—6 & 7 Will. 4, c. 105.] And be it enacted, that in every such borough court of record in which the recorder acts as assessor he shall after the passing of this Act be the sole judge; and that the provisions of this Act and of the said Act for regulating corporations, and also of an Act passed in the last session of parliament, intituled *An Act for the better administration of justice in certain boroughs*, shall extend to all such courts of which the recorder now acts as assessor, or of which he shall hereafter become the judge, any thing in the last-mentioned Acts or either of them to the contrary notwithstanding.

XXXV. *Jurisdiction of court of record may be extended.*] And be it enacted, that if His Majesty shall be pleased, upon the joint petition of the council of any borough named in either of the schedules to the said Act for regulating corporations, and of the justices of the adjoining county, riding,

parts, or division of a county, in quarter session assembled, to grant that the jurisdiction of any court of record for the trial of civil actions, or of any court of requests or of conscience for the recovery of small debts within such borough, shall be extended over any district adjacent to the said borough, and within the jurisdiction of such quarter sessions, such as to His Majesty, with the advice of his privy council, shall seem fit, the jurisdiction of every such court respectively shall be extended according to the tenor of the grant; and all the powers and provisions contained in the said Act for regulating corporations, and in an Act passed in the last session of parliament, intituled *An Act for the better administration of justice in certain boroughs*, and in this Act, relating to any such court, shall extend to the whole district comprised within such extended jurisdiction.

XXXVI. *Jurors may be summoned more than once yearly when all who are qualified have been once summoned.*] And whereas by the said Act for regulating corporations it is provided that no person shall be summoned to serve as a juror at the court of session of the peace, or court of record, in any borough named in either of the schedules to the said Act, oftener than once in one year: be it enacted, that nothing in the said Act contained shall prevent or excuse any person, qualified and liable to serve on any such jury from being summoned a second time in one year in case every person qualified and liable so to serve shall have been summoned once during that year.

XXXVII. *Councils of boroughs to have same powers as justices in general or quarter sessions had in relation to building, &c., gaols, &c. (a).*

XXXVIII. *Justices of cities or boroughs to regulate gaols, &c., therein at quarterly sessions (a).*

XXXIX. *Mayor, &c., not to be interested in any contract for building, &c., gaols, &c.]* And be it enacted, that it shall not be lawful for any mayor, alderman, councilman, or other officer of a corporation to be interested or concerned or employed, directly or indirectly, as an architect, builder, artist, mechanic, workman, merchant, trader, or otherwise howsoever in any part of the work to be done or materials to be supplied at any such gaol or house of correction, or in any contract whatever relating thereto; and if any one holding such office shall be so interested, concerned, or employed in such work or contract as aforesaid, he shall thenceforward be disqualified from continuing to hold such office, and also from being thereafter elected or appointed to fill any corporate office within any such city or borough.

XL. *Borough gaol may be built beyond the limits of the borough.]* And be it enacted, that it shall be lawful for the mayor, aldermen, and burgesses of any borough, by their council, to contract for the purchase of, and to have and hold to them and their successors, any lands not exceeding in the whole five acres, either within or beyond the limits of the borough, and to build thereon a town hall, council house, police office, gaol or house of correction for the borough; and any such gaol or house of correction, although built beyond the limits of the borough, may be declared by a resolution of the council, and upon such resolution shall be taken to be, the gaol or house of correction of the borough and shall be within the same jurisdiction and shall be governed and regulated in like manner as if within the limits of the borough.

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(a) Repealed—28 & 29 Vict. c. 126 (Prisons Act, 1865), s. 73, sched. 3, *post*.

XLI. *Gaols, &c., under county jurisdiction previous to 6 & 7 Will. 4, c. 103, excluded from the provisions of that Act.*] And whereas by the extension of the boundaries of certain boroughs, cities, and places, the county gaols, court houses, depôts for militia arms, and other public edifices and offices of counties have been included within the boundaries of those cities or boroughs, and are thereby subject to the jurisdiction of such cities or boroughs and of the sheriffs and other municipal authorities thereof; in remedy whereof be it enacted, that all county gaols, courts, depôts for arms, and all lands, buildings, easements, and appurtenances thereunto belonging, which before the passing of the Act passed in the last session of parliament to make temporary provision for the boundaries of certain boroughs or the authorized extension of the boundaries of any borough since the passing of that Act, were in, of, or belonging to any county, shall be taken to be and considered and shall remain part and parcel of such county, and under the exclusive jurisdiction of the authorities of such county, as if the said last-mentioned Act had not passed.

XLII. *Certain borough debtors and prisoners in contempt may be removed to the county gaol.*] And be it enacted, that in every case in which by virtue of any contract made between the council of any borough and the justices of any county, riding, parts, or division of a county, liberty, or jurisdiction, according to the provisions of the said Act for regulating corporations, the gaol belonging to such county, riding, parts, or division of a county, liberty, or jurisdiction shall be used as the gaol of such borough, prisoners for debt or in contempt arrested in any such borough under any process from any court may be taken and removed from such borough and confined in that part of such gaol which is appropriated to debtors, and such removal shall not be taken to be an escape: provided always, that every such prisoner shall still be taken to be within the legal custody of the person or persons in whose custody he would have been if imprisoned within the borough gaol, and the sheriff of such county, riding, parts, or division of a county, liberty, or jurisdiction shall not be answerable for the safe custody of any such prisoner: provided also, that it shall be lawful for the person or persons in whose custody such prisoner would have been if imprisoned within the borough gaol to take such security from the gaoler or keeper of the gaol to which any such prisoner shall be so removed, for the safe custody of all such prisoners, as shall be agreed on between the council and justices aforesaid.

XLIII. *Period to which accounts shall be made up.*] And whereas an Act was passed in the last session of parliament, intituled *An Act for the better administration of the borough fund in certain boroughs* (b), providing among other things that accounts of the receipt and expenditure on account of the mayor, aldermen, and burgesses of such boroughs should be sent to one of His Majesty's principal secretaries of state, and be laid before both houses of parliament; be it enacted, that every such account shall be made up to the last period of audit of the said receipt and expenditure, and not further or otherwise.

XLIV. *Orders for money may be removed into the Court of King's Bench by certiorari.*] And whereas it is expedient to give all persons interested in the borough fund of every borough a more direct and easy remedy for any misapplication of such fund; be it therefore enacted, that any order of the

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(b) 6 & 7 Will. 4, c. 104, ante.

council of any borough for the payment of any sum of money from or out of the borough fund of any borough may be removed into the Court of King's Bench by writ of *certiorari*, to be moved for according to the usual practice of the said court with respect to writs of *certiorari*; and that such order may be disallowed or confirmed upon motion and hearing, with costs, according to the judgment and discretion of the said court.

XLV. *Manner of transferring corporate property standing in the bank books, &c.*] And be it enacted, that any stocks, funds, or public securities which may be standing in the books of the governor and company of the bank of England, or of any other public company or society, in the name of the mayor, aldermen, and burgesses of any borough, either under their present or under any former style or title of incorporation, and the dividends and interest thereof, and all bonuses and accretions thereunto, which shall belong to the body corporate of such borough, without being subject to any trust for charitable purposes, may be transferred by and paid to such person or persons as the council of the said body corporate shall appoint by an instrument in writing under the corporate seal of the borough: provided that such instrument of appointment shall be signed and sealed also by the clerk to the charitable trustees of the borough, who is hereby directed, upon request, to sign and seal the same.

XLVI. *Manner of transferring charitable property standing in the bank books, &c.*] And be it enacted, that any stocks, funds, securities, and moneys standing as aforesaid in the name of any such body corporate, which shall belong to the charitable trustees of the borough solely upon some charitable trust or trusts, may be transferred by and paid to such person or persons as shall be appointed under the hands and seals of the greater part of the trustees, which appointment shall be attested under the hand and seal of the said clerk, provided that such instrument as last aforesaid shall be also sealed with the corporate seal of the borough, and the mayor of the borough is hereby required, upon request, to cause the seal of the borough to be affixed to such instrument of nomination.

XLVII. *By what authority and to whom dividends of charitable and corporate property standing in the bank books, &c., shall be paid.*] And be it enacted, that the dividends and interest of any stocks, funds, securities, and monies standing as aforesaid in the name of any such body corporate which shall belong partly to the said body corporate, but subject to some charitable trust or trusts, may be paid to such person or persons as shall be authorized to have the same paid to him or them, by an instrument in writing under the corporate seal of the borough, and appointed under the hands and seals of the greater part of the trustees, which appointment shall be attested under the hand and seal of the said clerk.

XLVIII. *Receipts for monies, and application thereof.*] And be it enacted, that in every case the receipt of the person or persons authorized to give a receipt to the said company or society, by any instrument under the corporate seal of the said borough, and also signed and sealed by the clerk to the charitable trustees, shall be an effectual discharge to the said company or society; and all monies so paid shall be applied to the uses and in the manner provided by the said Act; that is to say, so much of the said monies as may be held on charitable trusts shall be paid over to the charitable trustees of the said borough, and so much as the said body corporate shall be entitled to beneficially shall be paid over to the treasurer of

the borough, and applied as directed by the said Act as part of the borough fund; but no such public company or society as aforesaid shall be bound to see to the due application thereof, or to the validity of the appointment of the clerk to the charitable trustees, or to the execution of any such instrument by any of the said trustees, or to inquire whether or not the said stocks, funds, securities, or monies are charged with or held upon any charitable trust; and every person authorized to receive any monies under this Act shall account to the council and to the charitable trustees respectively for all monies so received by him, and the council and trustees respectively shall have the same remedies against any such person refusing or wilfully neglecting so to account as are provided by the said Act for regulating corporations, in the case of a treasurer or other officer appointed by the council refusing or wilfully neglecting to account, as provided by the said Act, during the continuance of his office, or within three months after the expiration of his office.

XLIX. *Powers of the Act, 5 & 6 Will. 4, c. 76 (s. 141), may be granted by the Crown to towns, or boroughs, though not corporate.*] And be it enacted, that if the inhabitant householders of any town or borough in England or Wales shall petition His Majesty to grant to them a charter of incorporation, it shall be lawful for His Majesty, by any such charter if he shall think fit by the advice of his privy council to grant the same, to extend to the inhabitants of any such town or borough within the district to be set forth in such charter all the powers and provisions of the said Act for regulating corporations, whether such town or borough be or be not a corporate town or borough, or be or be not named in either of the schedules to the said Act: provided nevertheless, that notice of every such petition, and of the time when it shall please His Majesty to order that the same be taken into consideration by his privy council, shall be published in the *London Gazette* one month at least before such petition shall be so considered, but such publication shall not need to be by royal proclamation.

L. *Business to be transacted at general or quarter sessions for the counties, &c., in which boroughs are situate.*] And be it further enacted, that, in all boroughs and places where general or quarter sessions of the peace have under and by virtue of the said recited Act ceased or been discontinued to be holden, all such business, matters, and things which, under or by virtue of any general or local Act of parliament, or any usage or custom, ought or were usually heard, decided, or transacted at such general or quarter sessions by the justices of the peace, with the assistance of any juries there assembled, shall and may hereafter be heard, decided, and transacted by the general or quarter sessions of the peace for the counties, ridings, or divisions, liberties, or jurisdictions in which such boroughs are situate, and by the justices of the peace and juries there assembled respectively.

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## 7 WILL. 4, AND 1 VICT. CAP. LXXXI.

An Act to provide for the levying of rates in Boroughs and Towns having Municipal Corporations in England and Wales. [17th July, 1837.]

*Payment of watch rate.*] Whereas by an Act passed in the sixth year of the reign of His late Majesty, intituled *An Act to provide for the regulation of municipal corporations in England and Wales* (a), authority was given to the council of any borough in certain cases to levy a borough rate (b), and in certain other cases to levy a watch rate, and the same powers and authorities were thereby given to them for that purpose as by law are given to justices of the peace at sessions with respect to a county rate: and whereas no authority is thereby given to the churchwardens or overseers of the poor of any parish or place, or other persons, who may thereby be legally ordered to pay or levy such rate, to pay the same out of the poor rate of such respective parishes or places, or otherwise to levy the same upon the inhabitants thereof: be it therefore enacted &c., that in all cases where by the said Act or by this Act a borough rate or watch rate may be made and levied in any borough, the council of such borough may order the churchwardens and overseers of every parish or place within which such rate may be levied, or such other persons as by law may make a poor rate for any such parish or place within the limits of such borough, to pay the amount of such part and portion of such rate for which such parish or place respectively shall be liable out of the poor rate made and collected or to be made or collected for such parish or place; or the said council, instead of ordering such churchwardens and overseers or other persons to pay the same out of the poor rate, may order them to make and collect a certain pound rate upon and from the occupiers or possessors of all rateable property within which such parish or place, for the amount of the rate for which such parish or place may be liable as aforesaid; and if such churchwardens, overseers, and other persons, upon being so ordered to pay such rate out of the poor rate, or to make and collect a pound rate as aforesaid, shall refuse or neglect to do so, the amount thereof may be made and levied off the goods of them or any of them by distress by virtue of a warrant in that behalf under the hand and seal of the mayor of such borough or of any two justices of the peace in and for the same; or if any person liable to pay such pound rate shall neglect or refuse to pay the same, the amount thereof may be levied upon his goods by distress in like manner (c).

## 1 &amp; 2 VICT. CAP. XXXI.

An Act for facilitating the sale of Church Patronage belonging to Municipal Corporations in certain cases. [4th July, 1838.]

*Right of nomination vested in municipal corporations may be sold.*] Whereas by an Act passed in the session of parliament holden in the fifth

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(a) 5 & 6 Will. 4, c. 76, ante.

(b) *Id.* s. 92.

(c) The remainder of this statute is repealed by the Statute Law Revision Act, 1874 (37 & 38 Vict. c. 35); s. 38, had already been repealed by the 12 & 13 Vict. c. 126, s. 73, post.



and sixth years of the reign of His late Majesty King William the Fourth intituled *An Act to provide for the regulation of municipal corporations in England and Wales* (d), (as the same Act is altered by another Act passed in the then next session of parliament, intituled *An Act for carrying into effect the reports of the commissioners appointed to consider the state of the established church in England and Wales, with reference to ecclesiastical duties and revenues, so far as they relate to episcopal dioceses, revenues, and patronage* (e)), it is enacted, that in every case in which any municipal body corporate, or any particular class, number, or description of members, or the governing body of such body corporate, is or are, in their corporate capacity, and not as charitable trustees, seised or possessed of any manors, lands, tenements, or hereditaments whereunto any advowson or right of nomination or presentation to any benefice or ecclesiastical preferment is appendant, or appurtenant, or of any advowson in gross, or hath or have any right or title to nominate or present to any benefice or ecclesiastical preferment, every such advowson, and every such right of nomination and presentation, shall be sold, at such time and in such manner as the ecclesiastical commissioners for England may direct, so that the best price may be obtained for the same; and the council of such body corporate is authorized and required, with the consent of the said commissioners, to convey and assure, under the common seal of such body corporate, such advowson or such right of nomination or presentation, to the purchaser or purchasers thereof: and whereas in some instances the manors, lands, tenements, or hereditaments whereof some municipal corporations are seised were granted to them with an obligation to nominate, provide, and sustain in certain churches or chapels able and fit priests, curates, preachers, or ministers, for the performance and administration of ecclesiastical duties and rites therein, and for the cure of the souls of the parishioners and inhabitants of the parishes or places thereunto belonging; and although such corporations have from time to time duly nominated and provided such priests, curates, preachers, or ministers, and paid stipends for their sustenance, and have either provided houses for their residences or made allowances in lieu thereof, yet such stipends and allowances have not been fixed or assured by any competent authority; and for want of any regular endowment or augmentation of such curacies they have not become perpetual cures, or benefices representative, and the curates have not become bodies politic and corporate, within the meaning of an Act passed in the first year of the reign of His Majesty King George the First, intituled *An Act for making more effectual Her late Majesty's gracious intentions for augmenting the maintenance of poor clergy* (f), and of an Act passed in the thirty-sixth year of the reign of His Majesty King George the Third, intituled *An Act for the further support and maintenance of curates within the Church of England, and for making certain regulations respecting the appointment of such curates, and the admission of persons to cures augmented by Queen Anne's bounty with respect to the avoidance of other benefices* (g); by reason whereof doubts have arisen whether the right of nominating ministers to such churches and chapels can be sold under the provisions of the said first hereinbefore recited Act; and it is expedient that such doubts should be removed: be it therefore declared and enacted, &c., that every right of nomination of every such priest, curate, preacher, or minister, which at the time of the passing of the first hereinbefore recited Act was vested in any municipal

(d) 5 & 6 Will. 4, c. 76, (see s. 139) *ante*.  
 (e) 6 & 7 Will. 4, c. 77 (see s. 26).

(f) 1 Geo. 1, c. 10 (s. 4).  
 (g) 36 Geo. 3, c. 83 (s. 3).

corporation, or in any member of such corporation in virtue of his office as such, shall and may be sold, at such time and in such manner as the said commissioners may direct, and shall by such conveyance or assurance as is in the said first-recited Act mentioned become vested in the purchaser thereof, his heirs and assigns; and that from and after such sale and assurance every such curacy, preachiership, or ministry, shall become a benefice presentative within the meaning of the said recited Act of the thirty-sixth year of the reign of King George the Third; and every such curate, preacher, or minister, and his successors for ever, shall become and be a body politic and corporate within the meaning of the said recited Act of the first year of the reign of King George the First, and shall have perpetual succession, and shall be capable of taking and holding in perpetuity all such lands, tithes, tenements, hereditaments, monies, goods, and chattels as shall be granted unto or purchased for them respectively by the governors of the bounty of Queen Anne, or by other persons contributing with the said governors as benefactors; and every such purchaser, his heirs and assigns, may present to such benefice, from time to time when and as the same shall become vacant, in the same manner to all intents and purposes, as patrons may now present to benefices presentative.

II. *Notwithstanding any sale, the property to be liable to same obligation as previous thereto.*] And be it enacted, that notwithstanding any such sale and conveyance as aforesaid, every such corporation, and the property belonging thereto, shall continue liable to the same obligations (if any) of providing for and maintaining or contributing to the maintenance of any such priest, curate, preacher, or minister, to which such corporation and property would have been liable if no such sale and conveyance had taken place; and such liability (if any) may be enforced by the same means, at the instance of Her Majesty, her heirs or successors, or otherwise, as if the first hereinbefore recited Act had not been passed, and the right of nominating such priest, curate, preacher, or minister had remained vested in such corporation.

III. *Municipal corporations may augment and endow priestships, &c., as heretofore.*] Provided always, and be it hereby further enacted, that nothing in this Act or in the said first-recited Act contained shall preclude any municipal corporation seised of any manors, lands, tenements, or hereditaments, subject to an obligation to nominate and provide any such priest, curate, preacher, or minister, from augmenting and endowing such priestship, curacy, preachiership, or ministry, either by the assigning of a competent portion of such manors, lands, tenements, or hereditaments to such priest, curate, preacher, or minister, and his successors, or by charging thereon an annual stipend, either in money or in kind, for his and their use and benefit, in as full and ample manner as such corporation might have done before the passing of the said first-recited Act: provided always, that no such augmentation or endowment shall be valid without the consent of the lords commissioners of Her Majesty's treasury, or any three of them.

IV. *Act to apply to previous, present, and future sales.*] And be it enacted, that this Act shall be deemed and taken to apply as well to sales already made, and to sales now in progress, as also to sales which shall hereafter be made.

## 1 &amp; 2 VICT. CAP. XXXV.

An Act to repeal the Stamp Duty now paid on admission to the Freedom of Corporations in England. [4th July, 1838.]

*No stamp duty chargeable on admission of freemen in cities and boroughs.*] Whereas the right and privilege of the freemen of the cities and boroughs in England, who have acquired their freedom by birth or servitude, to vote for members to serve in parliament, have been confirmed by divers statutes; it is expedient that all impediments to the admission of persons entitled to the freedom of corporations should be removed, and that the stamp duty payable on such admission should be abolished: be it therefore enacted, &c., that the passing of this Act no stamp duty shall be chargeable on the admission of any person entitled to take up his freedom by birth or servitude in any city or borough in England returning a member or members to serve in parliament.

## 2 &amp; 3 VICT. CAP. XXVII.

An Act for regulating the proceedings in the Borough Courts of England and Wales. [19th July, 1839.]

*Judges of courts of records in boroughs empowered to make, &c., rules for regulating the times of holding and practice in said courts.*] Whereas great difficulty has been found in framing legal and convenient rules for regulating the practice of borough courts under the authority given for that purpose by an Act passed in the session holden in the fifth and sixth years of the reign of His late Majesty King William the Fourth, intituled *An Act to provide for the regulation of municipal corporations in England and Wales* (a), and by an Act passed in the session holden in the sixth and seventh years of the same reign, intituled *An Act for the better administration of justice in certain boroughs* (b); and it is expedient that the power to make rules for regulating the proceedings of such courts, subject to the approbation and confirmation of the judges of the superior courts of common law at Westminster, should be explained and in some respects enlarged: be it therefore enacted, &c., that in every borough named in the schedules A. and B. to the first hereinbefore mentioned Act annexed, in which by charter, custom, or otherwise, there is or ought to be holden a court of record for the trial of civil actions, every judge of such court shall have authority to make, alter, and revoke such rules for appointing the times of holding such court, for regulating the forms and manner of proceeding, the process, appearance, practice, and pleadings in such court, and for settling the reasonable fees of the attorneys of the court for business transacted therein, as shall from time to time seem to him necessary and proper for expediting the business of such court with most convenience, and at the smallest reasonable expense: provided always, that no such rules, or any

(a) 5 & 6 Will. 4, c. 76 (see s. 118), *ante*.

(b) 6 & 7 Will. 4, c. 105 (see s. 9), *ante*.

order revoking or altering such rules, shall be of any force until they shall have been allowed and confirmed by three of the judges of the superior courts of common law at Westminster.

II. *Courts to be held four times yearly.*] Provided also, and be it enacted, that every such court shall be holden for the trial of issues of fact and of law four times at least in each year, and with no greater interval between the holding of any two successive courts than four calendar months.

III. *Personal actions to be by summons.*] And be it further enacted, that from and after the first day of September next all personal actions brought in the borough courts of England and Wales shall be commenced by writ of summons.

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## 2 & 3 VICT. CAP. XXVIII.

An Act for more equally Assessing and Levying Watch Rates in certain Boroughs. [19th July, 1839.]

*Watch rate may be levied not exceeding [8d.] (a) in the pound, or in certain cases the average rate.*] Whereas by reason of the restrictions contained in an Act passed in the sixth year of the reign of His late Majesty, intituled *An Act to provide for the regulation of municipal corporations in England and Wales* (b), the watch rate authorized by the said Act to be levied upon those parts of the boroughs within the provisions of the said Act which are regularly watched is insufficient for that purpose, and the deficiency in many cases is paid out of the borough rate, to which all parts of the borough, whether or not regularly watched, are liable: for remedy thereof be it enacted, &c., that after the passing of this Act it shall be lawful for the council of any borough named in either of the schedules to the said Act to levy a watch rate upon the occupiers of all messuages, lands, tenements, and hereditaments within those parts of the borough which shall be watched by day and by night, and which from time to time, by any order of the council of any such borough, shall be declared liable to such watch rate; and every such rate shall be made upon an estimate of the net annual value of the several hereditaments rated thereunto; that is to say, of the rent at which, one year with another, the same might in their actual state be reasonably expected to let from year to year, the probable annual average cost of the repairs, insurances, and other expenses (if any) necessary to maintain the hereditaments in their actual state, and all rates, taxes, and public charges, except tithes or tithe commutation rent-charges (if any), being paid by the tenant, and either by one rate made yearly, or by two or more rates made half-yearly, or otherwise: provided always, that no such rate shall exceed, in any one year, the rate of [sixpence] (a) in the pound on the

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(a) 22 & 23 Vict. c. 32, s. 5, *post*, repeals so much of this Act as provides that the amount of watch-rate to be levied by the council of any borough shall not exceed in any one year the rate or sum of sixpence in the pound or otherwise limits the discretion of the said council in relation to the amount of such rates; and sect. 6 raises the amount to eightpence.

(b) 5 & 6 Will. 4, c. 76 (see ss. 84—92).

net annual value of the hereditaments rated thereunto, unless in those boroughs in which, at the time of the passing the said Act, the sum authorized by the said Act to be levied by way of watch rate exceeded the sum which might have been then raised by the said rate of [sixpence] (c) in the pound; and in such cases as last aforesaid it shall be lawful to levy a watch rate under this Act upon all the hereditaments liable thereunto, at such rate as would have sufficed to raise such greater sum: provided also, that nothing herein contained shall be construed to extend to either of the universities, so as to make the members thereof liable to pay to any rate to be made in pursuance of this Act to which the said universities or the members thereof were not liable to contribute before the passing of this Act, nor shall be deemed to affect the liability of the borough fund to make good any deficiency of the watch rate towards the expenses of the police, should any such deficiency arise, nor to make liable to the watch rate any lands, tenements, or hereditaments which are now exempted by any local Act from the payment of watch rates, or to alter the comparative liability of any lands, tenements, or hereditaments to the watch rate, which by any local Act are now, in respect of any watch rate, entitled to any deduction from or chargeable with any increase upon an equal pound rate; but the like comparative deductions and increased charges shall be made in respect of such hereditaments in the rates to which such hereditaments shall be rated under this Act.

II. *As to the powers of the council of any borough.*] And be it enacted, that for the purposes aforesaid the council of every such borough, and all other persons interested or concerned therein, shall have all the powers heretofore given to them respectively in the matter of the borough rate and watch rate or either of them, by the said Act or by any other subsequent Act, for ordering making, assessing, levying, raising, collecting, or paying the same, or as near thereto as the nature of the case will admit.

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2 & 3 VICT. CAP. XCIII.

An Act for the Establishment of County and District Constables by the Authority of Justice of the Peace. [27th August, 1839.]

XXIV. *Exemption of borough towns.*] Provided always, and be it enacted, that nothing in this Act contained shall extend to authorize the justices of the peace of any county to appoint any constable within any borough incorporated under the provisions of an Act passed in the sixth year of the reign of His late Majesty, intituled *An Act to provide for the regulation of municipal corporations in England and Wales* (d), or under the provisions of any charter granted in pursuance of the said Act; nor shall any such borough for which a separate court of quarter sessions of the peace shall be holden, be liable to contribute to the expenses of this Act, or to be charged with any part thereof in their account with the treasurer of such county.

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(c) See note (a) to 2 & 3 Vict. c. 28. s. 1, *ante*, p. xcvi.

(d) 5 & 6 Will. 4, c. 76 (see sects. 76, 86), *ante*.

## 3 &amp; 4 VICT. CAP. XXVIII.

An Act to explain and amend an Act of the second and third years of Her present Majesty, for more equally assessing and levying Watch Rates in certain boroughs. [23rd July, 1840.]

*Recited Act (2 & 3 Vict. c. 28) not to apply to boroughs in certain cases.]* Whereas by an Act passed in the session of parliament holden in the second and third years of the reign of Her present Majesty, intituled *An Act for more equally assessing and levying watch rates in certain boroughs*, after reciting therein that by reason of the restrictions contained in an Act passed in the sixth year of the reign of His late Majesty King William the Fourth, intituled *An Act to provide for the regulation of municipal corporations in England and Wales* (a), the watch rate authorized to be levied upon those parts of the boroughs within the provisions of the said Act which were regularly watched was insufficient for that purpose, and the deficiency in many cases was paid out of the borough rate to which all parts of the borough, whether or not regularly watched, were liable; for remedy thereof it was enacted, amongst other things, that it should be lawful for the council of any borough named in either of the schedules to the said Act of His late Majesty to levy a watch rate upon the occupiers of all messuages, lands, tenements, and hereditaments within those parts of the borough which should be watched by day and by night, and which from time to time, by any order of the council of any such borough, should be declared liable to such watch rate, provided that no such rate should exceed in any one year the rate of *sixpence* (b) in the pound on the net annual value of the hereditaments rated thereunto unless in those boroughs in which at the time of passing the said Act of His late Majesty the sum authorized to be levied by way of watch rate exceeded the sum which might have been then raised by the said rate of *sixpence* (b) in the pound: and whereas the said Act of Her present Majesty was intended to apply to boroughs in which, from the deficiency of the borough fund, it had become or might become necessary that borough rates should be *laid* (c); but doubts have been entertained whether the same Act may not apply to cases of municipal boroughs in which there are borough funds sufficient for the purposes of defraying the expenses of the constabulary force of such boroughs, together with all other expenses payable out of the borough fund, with the aid of the amount only of watch rate which could be raised under the provisions of the said Act of His said late Majesty and without the aid of any borough rate; and doubts are also entertained whether by the said Act of Her present Majesty it is not imperative upon the council of each borough to levy in each borough a watch rate to the extent of *sixpence* (b) in the pound; and in order to remove such doubts, be it enacted and declared, &c., that after the passing of this Act the said Act of Her present Majesty shall not apply or be deemed to apply to any borough in which the borough fund is sufficient, with the aid of the amount only of watch rate which could be raised under the provisions of the said Act of His late Majesty and without the aid of any borough rate, to defray the expense of the constabulary force of the borough, together with all the other expenses legally payable out of the borough fund, by virtue of the

(a) 5 & 6 Will. 4, c. 76, *ante*.

(b) See note (a) to 2 & 3 Vict. c. 28, s. 1, *ante*, p. xcvi.

(c) This should be "levied."

said Act of His late Majesty, or any other Act or Acts of parliament: provided always, that nothing in this Act contained shall be deemed to take away or lessen, or to vary or affect, the particular benefit or rights to common lands, and public stock, and to lands, tenements, and hereditaments, and to the rents and profits thereof, or to any sum or sums of money, chattels, securities for money, or other personal estate which are reserved by the said recited Act of His late Majesty to every person who then was or thereafter might be an inhabitant of any borough, and also to every person who had been admitted or who might thereafter have been admitted a freeman or burgess of any borough if that Act had not been passed, or who then was or thereafter might be the wife or widow, or son or daughter, of any freeman or burgess, or who had espoused or might thereafter espouse the daughter or widow of any freeman or burgess, or who had been or might thereafter be bound an apprentice: provided also, that nothing herein contained shall render the borough fund of any borough liable to any expenses with which such borough fund was not chargeable before the passing of the said recited Act of Her present Majesty.

II. *Limiting amount of watch rate to be annually levied.*] And be it enacted and declared, that the amount of watch rate to be levied by the council of any borough under the authority of the said recited Act of Her present Majesty shall be at the discretion of each such council, but not exceeding in any one year the sum of *sixpence (d)* in the pound, as limited by the same Act.

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### 3 & 4 VICT. CAP. LXXXVIII.

An Act to amend the Act for the Establishment of County and District Constables. [7th August, 1840.]

XII. *Station houses and strong rooms to be provided.*] And be it enacted, that it shall be lawful for the justices in general or quarter session assembled of any county in which or in any part of which constables shall be appointed under the first-recited Act (e), if they think fit, to order that station houses and strong rooms, or either of them, for the temporary confinement of persons taken into custody by the constables, be provided in such places as the said justices shall think fit, and upon such plan as shall be approved by one of Her Majesty's principal secretaries of state, and for that purpose to purchase and hold lands and tenements or to appropriate to that purpose any lands or tenements belonging to the county which are not needed for the purpose to which they were applied or intended to be applied before such appropriation; and the expense of building, hiring, or otherwise provided, repairing, and furnishing such station houses and strong rooms shall be defrayed out of the police rates. (f)

XIII. *Money may be borrowed on credit of the police rates.*] And be it enacted, that it shall be lawful for the justices in general or quarter session assembled to borrow money for the purpose of purchasing any such lands and tenements, or of building any such station houses and strong rooms, and to charge the future police rates with the amount of the loan, and

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(d) See note (a) to 2 & 3 Vict. c. 28, s. 1, *ante*, p. xcvi.

(e) 2 & 3 Vict. c. 93.

(f) See 19 & 20 Vict. c. 69, s. 23, and 31 & 32 Vict. c. 22, *post*.

with interest thereon: provided always, that any money borrowed for such purpose shall be repaid by yearly instalments, not less than one twentieth part of the sum borrowed, with interest on the same, in any one year.

XIV. *Boroughs may agree to consolidate their police with county police.*] And be it enacted, that it shall be lawful for the justices of any county in which constables shall have been appointed under the said Act, and for the council of any incorporated borough situated in or adjoining to such county, to agree together for the consolidation of the county and borough police establishments (a); and in every such case all the constables appointed either for the county or the borough shall have all the powers, privileges, and duties throughout the county and the borough which constables appointed for any county have within that county under the said Act, and all the provisions of the said Act shall be taken to apply to the borough constables as well as to the county constables, except as is herein otherwise provided; and every such agreement which shall have been agreed to by the justices of the county in general or quarter session assembled, on the one hand, and by the mayor, alderman, and burgesses of the borough, by their council, on the other hand, shall be binding on both parties, as soon as a memorandum of such agreement under the hands of two or more justices of the county, and countersigned by the clerk of the peace, shall be delivered to the council of the borough, and a counterpart thereof under the common seal of the borough shall be delivered to the justices; and when any such agreement shall have been made between any county and any borough, either party shall be empowered to put an end thereunto, without the consent of the other party, after six months' notice in writing shall have been given to the other party (b); such notice, if given by the county, to be under the hands of two or more justices and countersigned by the clerk of the peace, or if given by the borough to be under the common seal of the borough: provided always, that no such notice shall be given by the justices or by the borough, unless in either case such notice shall be agreed upon by a majority of three-fourths of the justices attending at any general or quarter session, or three-fourths of the council of the borough.

XV. *Government of consolidated police.*] And be it enacted, that in all cases where the establishment of county and borough constables shall be consolidated into one police establishment, the chief constable of the county shall have the general disposition and government of all such constables, subject to the provisions hereinafter contained, and at his pleasure may dismiss all or any of them; and whenever the chief constable shall dismiss one of the borough constables he shall report the fact, with his reasons for the dismissal, to the mayor of the borough, and the watch committee of the borough shall forthwith appoint another constable properly qualified, unless provision shall be made in such agreement that all constables shall be appointed by the chief constable; and no borough constable who shall have been dismissed by the chief constable shall be capable of being re-appointed for the same borough without the consent of the chief constable; and so much of the said Act for regulating corporations as empowers the said committee, or any two justices of the peace having jurisdiction within the borough, to dismiss any constable, shall be suspended, as to those boroughs whose establishment of constables is consolidated with the establishment of county constables, during the time that any agreement for such consolidation shall be in force.

(a) See 22 & 23 Vict. c. 32, s. 17, *post*.

(b) See 19 & 20 Vict. c. 69, s. 20, *post*.



## 4 &amp; 5 VICT. CAP. XLVIII.

An Act to render certain Municipal Corporations rateable to the Relief of the Poor in certain cases. [21st June, 1841.]

*Certain municipal corporations rated to the poor.*] Whereas the municipal corporations of cities and boroughs named in the schedules (A.) and (B.) annexed to the Act passed in the sixth year of the reign of King William the Fourth, to provide for the regulation of municipal corporations in England and Wales (c), have been held not to be liable by law to be rated to the relief of the poor in respect of any lands, tenements, and hereditaments being the properties and in the occupation of such municipal corporations, by reason that the income arising therefrom is applicable to public purposes only; and it is expedient that municipal corporations should nevertheless in some cases be rateable and be rated to the relief of the poor in respect of such property: be it therefore enacted, &c., that the said municipal corporations named in the said schedules shall, from and after the passing of this Act, be rateable and be rated to the relief of the poor in respect of lands, tenements, and hereditaments being the property and in the occupation of such municipal corporations, as if such lands, tenements, and hereditaments were not corporate property, any law, usage, or custom to the contrary notwithstanding; provided always, that where such property lies in any parish which is situate wholly within the boundaries and limits of a city or borough named in the said schedules, and in which city or borough the poor are relieved by one entire poor rate, or in which city or borough the poor within the boundaries or limits thereof as existing for municipal purposes at the time of passing the said Act were then relieved by one entire poor rate, the exemption of such property from rateability shall continue as if this Act had not passed.

II. *The said corporations to be deemed beneficial occupiers.*] And be it enacted, that any of the said municipal corporations being in the occupation of such lands, tenements, and hereditaments as are hereinbefore described, shall be deemed and taken to be beneficial occupiers thereof, for all the purposes of rating, as if such occupation was for their own private advantage, and not for any public purposes or purpose, and shall be liable to be rated as such occupiers by their corporate style and title.

## 5 &amp; 6 VICT. CAP. XCVIII.

An Act to amend the Laws concerning Prisons. [10th August, 1842.]

I. *Confirmation of title to lands, &c., taken for the purposes of prisons, &c. (d).*

II. *Jury to ascertain the value to be paid (d).*

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(c) 5 & 6 Will. 4, c. 76, ante.

(d) Repealed 28 & 29 Vict. c. 126 (The Prison Act, 1865), s. 73, sched. 3, post.

III. *The borough council may borrow money for building prisons.*] And be it enacted, that in every borough in which there is or shall be a body corporate of mayor, aldermen, and burgesses, under the provisions of an Act passed in the sixth year of the reign of His late Majesty, intituled *An Act to provide for the regulation of municipal corporations in England and Wales*(a), or of any charter granted in pursuance of that or any subsequent Act, and in which there shall be a separate court of sessions of the peace, it shall be lawful for the mayor, aldermen, and burgesses, by their council, from time to time, to take up and borrow any sum of money not exceeding the amount of the estimate or estimates approved by the council, for building or rebuilding, repairing or enlarging the prison, court house, or other necessary buildings to be used with the prison for such borough, according to any plan approved by one of Her Majesty's principal secretaries of state, and for the purchase of land for the purposes of any such prison, court-house, and other necessary buildings as aforesaid, or for repaying any moneys which may have been borrowed for any of the said purposes before the passing of this Act: provided always, that the whole of the sum borrowed under this Act, and the interest accruing due from time to time, shall be repaid within thirty years from the time of borrowing the same.

IV. *Exchequer loan commissioners may grant loans* (b).

V. *Power of mortgage.*] And be it enacted, that for securing repayment of the money so advanced it shall be lawful for the council to grant bonds under the common seal of the mayor, aldermen, and burgesses of the borough, or instead of issuing such bonds to mortgage, with the consent of three or more commissioners of Her Majesty's treasury, any part of the lands, tenements, and hereditaments of the said body corporate, the issues, rents, and profits of which, by any law now in force, are or may be applied towards erecting or maintaining a gaol or house of correction in their borough, and to repay the money borrowed, and the interest accruing due thereon, or so much thereof as the council shall think fit to charge thereupon, out of the borough fund or borough rate, but subject and without prejudice to any prior claim upon such borough fund, or instead or in aid thereof it shall be lawful for the council to make gaol rates, and to secure the repayment of any money so advanced, with the interest accruing due, or so much as shall be charged thereupon, by mortgage of the borough rates or gaol rates, so that all the money borrowed, with the interest due thereon, shall be repaid within the said term of thirty years, or in case the money shall have been advanced by the commissioners of exchequer bills, within twenty years; and every such mortgage may be by instrument in the form contained in the schedule annexed to this Act, or in any other suitable form.

VI. *Gaol rate to be made and raised in the same manner as borough rate.*] And be it enacted, that every gaol rate made for the purpose of repaying any money advanced by any person or body corporate for any of the purposes aforesaid shall be made, levied, and raised in like manner as the borough rate may be made, levied, and raised; and all powers and authorities now vested in the council, or in the overseers of the poor, or persons appointed by the council to act as such overseers, relating to the making, levying, and collecting the borough rate, shall be in full force and effect in relation to the making, levying, and collecting any such gaol rate.

(a) 5 & 6 Will. 4, c. 76, *ante*.

(b) Repealed 28 & 29 Vict. c. 126 (Prison Act, 1865), s. 73, sched. 3, *post*.

VII. *Parishes, &c., partly within the borough.*] And be it enacted, that in every case in which any parish, township, precinct, or place liable to support its own poor shall be partly within and partly without any such borough, the overseers or other persons charged with the collection of the rates made for the relief of the poor in such parish, township, precinct, or place, upon the receipt of any warrant from the mayor, or any justice or justices of the peace, high constable, or other officer duly authorized to act in that behalf within the borough, for the payment of money for the purposes of this Act (which warrants every such mayor, justice of the peace, high constable, and other officer shall be severally empowered to direct to them, in like manner as if the whole of such parish, township, precinct, or place were within their borough), shall assess upon and levy from the inhabitants and occupiers of all messuages, lands, tenements, and hereditaments liable to the poor rates in that part of their parish, township, precinct, or place which is within the borough, the amount mentioned in the warrant, either as a separate rate or rates, for which the said overseers shall have all the powers which belong to them for levying a rate for the relief of the poor, or with and as part of the poor rate, and in addition to the poor rate to which the inhabitants and occupiers of property within that part of the parish, township, precinct, or place may be liable, in common with the inhabitants and occupiers of property within the other part thereof which is not within the borough, and out of the moneys so levied and collected, or out of any moneys in their hands collected for the relief of the poor, shall pay the amount mentioned in the warrant, and in default thereof shall be subject to all the provisions and penalties provided by any Act concerning the nonpayment of any borough rate.

VIII. *Corporations and others empowered to sell and convey lands.* (c).

IX. *Repeal of part of 4 Geo. 4, c. 64* (c).

XIII. (d) *Extending the power of holding land for prisons* (c).

XIV. *Contracts may be made with committees of district prisons.*] And be it enacted, that the justices of any county, and the mayor, aldermen, and burgesses of any borough, by their council, shall respectively have the same power for contracting with the committee for managing any district prison established under an Act passed in this session of parliament (e), for the conveyance, support, and maintenance in such district prison of prisoners committed thereto from such county or borough, which they respectively have for contracting for the like purpose with the justices of any county, or the mayor, aldermen, and burgesses of any borough, or their council; and it shall be lawful for the committee for managing any such district prison to enter into such contracts, and to order that offenders shall be received under such contracts into the said district prison, although the county or borough with which any such contract may be made shall not be a contracting party to the agreement in pursuance of which such district prison shall have been established; and all such offenders may be tried and sentenced by the district court for all offences of which the court has cognizance, and

(c) Repealed, 28 & 29 Vict. c. 126 (Prison Act, 1865), s. 73, sched. 3, *post*.

(d) Sects. x and xi relate to county gaols only; s. xii to Parkhurst Prison.

(e) 5 & 6 Vict. c. 53.

punished accordingly, in like manner as any offenders committed to such district prison from any borough, party to the said agreement (a).

XV. *Gaol and house of correction to be provided for every borough having separate courts of sessions of the peace, except as to district prisons.*] And be it enacted, that in every such borough as aforesaid to which a separate court of sessions of the peace hath been or shall hereafter be granted, there shall be one common gaol and at least one house of correction, excepting those boroughs in which the mayor, aldermen, and burgesses, by their council, shall have contracted with the justices of the peace having authority or jurisdiction in or over any gaol or house of correction of the county, riding, or division wherein such borough is situated, or whereunto it is adjacent, or with the mayor, aldermen, and burgesses of some other borough in which there is a gaol or house of correction, or with the committee of a district prison, for the support and maintenance in such last-mentioned gaol or house of correction, or district prison, respectively, of any prisoners committed thereunto from such borough; and during the continuance of any such contract, but no longer, the first-mentioned mayor, aldermen, and burgesses shall not be bound to maintain any other gaol or house of correction for their borough; and it shall be lawful for the mayor, aldermen, and burgesses of any such borough, by their council, to enter into such contracts as aforesaid, although at the time of entering into such contract there may be no gaol or house of correction belonging to such borough; and all enactments with respect to such contracts shall apply as well to those contracts where at the time of entering into the same there was or is a gaol or house of correction belonging to the borough, as to those contracts where there was or is no gaol or house of correction belonging to the borough at the time of entering into the same.

XVI. *Repeal of part of 1 Geo. 2, c. 20 (b).*

XVII. *Repeal of any enactment authorizing agreement to be made at quarterly meeting of council.*] And be it enacted, that so much of any Act as enacts that any such agreement shall be made by the council of any borough at a quarterly meeting of the council shall be repealed, and that any such agreement may be made by the council of any such borough at a special meeting of the council to be called for that purpose (c): provided always, that nothing in this Act shall affect any contract entered into before the passing of this Act between any justices and the council of any borough.

XVIII. *Expense of borough prisoners in county prisons to be paid by the borough.*] And be it enacted, that in every borough to which a separate court of sessions of the peace hath been or shall hereafter be granted or purported to be granted, and where the persons committed for offences arising within such borough have been or shall hereafter be sent to any prison of the county in which such borough is situated, and that no special contract shall be subsisting between such borough and county relative to the said prisoners, the council of such borough shall pay or cause to be paid

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(a) See 28 & 29 Vict. c. 126, s. 76, *post*.

(b) This section relates to the city of Canterbury only.

(c) See 5 & 6 Will. 4, c. 76, s. 114, *ante*.

to the treasurer of such prison, or other person appointed by the justices of the peace in general or quarter sessions assembled, for the county in which such prison is situated, the actual expenses heretofore incurred, or hereafter to be incurred, in the conveyance, transport, maintenance, safe custody, and care of every such prisoner, according to the time for which each such prisoner shall have been or shall remain in custody there, at the average daily cost of each prisoner, according to the whole number of prisoners confined in the said prison, such average to be taken yearly, half-yearly, quarterly, or at such other intervals as the visiting justices of the prison shall from time to time determine, including in such expenses all salaries of officers, all expenses of repairs, alterations, additions, and improvements in or to the said prison, all sums paid to prisoners under any Act of parliament on their discharge or otherwise, and any other charge whatsoever on account of the prisoners confined in such prison; subject nevertheless to a proportional share of all deductions on account of the earnings of prisoners in the said prison, and of all sums of money received in aid of the rates levied for the maintenance of the said prison: provided always, that the payment by the council of any such borough of any such expenses incurred before the passing of this Act may be made by five equal yearly instalments, the first of such instalments to be payable within three calendar months after the passing of this Act, with interest after the yearly rate of four pounds in the hundred, to be calculated from the passing of this Act, upon so much of the said expenses incurred before the passing of this Act as shall remain unpaid until the whole shall be discharged.

XIX. *Expenses of prosecution of such prisoners how to be defrayed.*] And be it enacted, that the expenses heretofore incurred or hereafter to be incurred in the prosecution of such prisoners as aforesaid at the general or quarter sessions of the peace of the county wherein such borough is situated shall be defrayed by the treasurer of such borough in such manner as is directed for the payment of the costs of prosecutions by an Act passed in the sixth year of the reign of his late Majesty, intituled *An Act to provide for the regulation of municipal corporations in England and Wales* (d), out of a rate to be made, levied, and recovered within the said borough in the same manner as the rate hereinafter mentioned.

XX. *Expenses of conveyance and maintenance of such prisoners how to be paid.*] And be it enacted, that the expense heretofore incurred or hereafter to be incurred in the conveyance, transport, maintenance, safe custody, and care of such prisoners as aforesaid, shall be paid out of a rate to be made and levied for that purpose by the council of such borough in the nature of a borough rate; and any such rate may be made and recovered in the same manner as any borough rate may be made or recovered; and the amount of all such expenses of conveyance, transport, maintenance, safe custody, and care of prisoners as aforesaid shall, in case of dispute, be settled by such barrister-at-law as shall be determined upon in writing between the visiting justices of such prison and the council of such borough; and in case no appointment of such barrister be agreed upon by the said parties within the space of fourteen days next after such dispute shall have arisen, such dispute shall be decided by the arbitration of a barrister, to be named as provided in the case of differences with respect to the payment of moneys under contracts made by authority of an Act

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(d) 5 & 6 Will. 4, c. 76; see s. 113, *ante*.

passed in the fifth year of the reign of King George the Fourth, intituled, *An Act for amending an Act of the last session of parliament, relating to the building and enlarging of certain gaols and houses of correction, and for procuring information as to the state of all other gaols and houses of correction in England and Wales* (a).

XXI. *An account of such expenses to be rendered.*] And be it enacted, that an account in writing of the expenses due and payable, or claimed to be due and payable, in respect of the conveyance, transport, maintenance, safe custody, and care of such prisoners as aforesaid, shall be made out from time to time and signed by the clerk to the visiting justices of the prison to which such prisoners shall be committed, and delivered to the town clerk of the borough within which the offences shall have been committed, and such account shall be conclusive against such borough, unless some objection thereto shall be made in writing and signed by the town clerk of such borough, and delivered to the clerk of the said visiting justices within one calendar month next after such account shall have been delivered to such town clerk.

XXII. *Such boroughs to be freed from county rate.*] And be it enacted, that every such borough as aforesaid shall be freed from contributing to any rate in the nature of a county rate made for the county in which such borough is situated, in respect of the prosecution, conveyance, and transport, maintenance, and safe custody and care of such prisoners as aforesaid, so long as such expenses shall be defrayed under the provisions of this Act.

XXIII. *Invalidity of grant of sessions of the peace not to alter liability.*] And be it enacted, that in case any grant of a separate court of sessions of the peace, heretofore or hereafter to be made, or purported to be made, to any such borough as aforesaid, shall be quashed, vacated, or adjudged to be invalid, such borough shall, notwithstanding, continue to be freed from the payment of rates in the nature of county rates for such county, and liable to the payment of the costs of the prosecution, conveyance, and transport, maintenance, safe custody, and care of such prisoners as aforesaid, in the manner hereinbefore provided, up to the time at which such grant shall have been quashed, vacated, or adjudged to be invalid, and thenceforth to the time of holding the general or quarter sessions of the peace at which the next rate in the nature of a county rate shall be made in respect of the prosecution, conveyance and transport, maintenance, safe custody, and care of prisoners for offences arising within the county within which such borough is situated, and no longer.

XXIV. *Act not to affect the validity of charters.*] And be it enacted, that nothing in this Act contained shall be deemed to affect any question which has arisen or may hereafter arise touching the validity of any charter of incorporation or grant of a separate court of sessions of the peace; but every rate to be made or levied as last hereinbefore provided, and every other proceeding under the authority of this Act, shall be valid, whether any such charter or grant is valid or invalid.

XXV. *Penalty for assaults on prison officers* (b).

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(a) 5 Geo. 4, c. 85. This Act is repealed by 28 & 29 Vict. c. 126 (Prison Act 1865), sched. 3, *post*, see s. 76.

(b) Repealed as above.

XXX. (c) *Superannuation allowances to officers of prison* (d).

XXXI. *Sheriffs liable in damages only for escapes; not to receive poundage.*] And be it enacted, that if any debtor in execution shall escape out of legal custody after the passing of this Act, the sheriff, bailiff, or other person having the custody of such debtor shall be liable only to an action upon the case for damages sustained by the person or persons at whose suit such debtor was taken or imprisoned, and shall not be liable to any action of debt in consequence of such escape; and that after the first day of March in the year one thousand eight hundred and forty-three, no poundage shall be payable to sheriffs, bailiffs, and others, for taking the body of any person in execution, but there shall be payable to the sheriff or other person having the return of writs, upon every such execution against the body, such fees only as shall be allowed to be taken by sheriffs or other officers concerned in the execution of process under the sanction and authority of the judges of the courts of common law at Westminster, pursuant to the statute passed in the first year of the reign of Her Majesty, intituled *An Act for better regulating the fees payable to sheriffs upon the execution of civil process.* (e)

XXXII. *Interpretation of Act.*] And be it enacted, that in this Act the word "county" shall be taken to mean also riding, parts, division, or hundred; and the word "prison" shall be taken to mean also gaol or house of correction.

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SCHEDULE to which the foregoing Act refers.

*Form of mortgage and charge upon the borough rates or gaol rates for securing money borrowed by the mayor, aldermen, and burgesses of any borough.*

The mayor, aldermen, and burgesses of the borough [town or city] of — by their council, at a special meeting of the said council, holden on the — day of — in pursuance of the powers given by an Act passed in the sixth year of the reign of Her Majesty Queen Victoria, intituled [*insert the title of this Act*], do hereby mortgage and charge all the rates to be raised within the said borough [town or city] under the description of borough [or gaol] rates, with the payment of — which *G. H.* of — hath agreed to lend, and hath now actually paid towards defraying the expenses of building [or rebuilding, repairing, or enlarging *as the case may be,*] the gaol [or house of correction, court house, or other necessary buildings, *as the case may be,*] for the said borough [town or city]; and do hereby, by the council aforesaid, confirm the same unto the said *G. H.*, his executors, administrators, and assigns, for securing payment of — and interest for the same, after the yearly rate of — by the hundred; and do order the treasurer for the said borough [town or city] to pay the interest of the said — half-yearly as the same shall become due, until the principal shall be discharged, pursuant to the directions of the said Act.

Given under the common seal of the borough [town or city] this — day of —, in the year —,

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(c) Sects. 26 to 29, inclusive, do not relate to corporations.

(d) Repealed 28 & 29 Vict. c. 126 (Prison Act, 1865), s.73, sched. 3, post.

(e) 7 Will. 4, and 1 Vict. c. 55.

## 5 &amp; 6 VICT. CAP. CIV.

An Act to explain and amend certain enactments contained respectively in the Acts for the Regulation of Municipal Corporations in England and Wales [and in Ireland]. [10th August, 1842.]

*The word "contract" not to extend to leases, sales, &c.]* Whereas by an Act passed in the session of parliament held in the fifth and sixth years of the reign of His late Majesty King William the Fourth, intituled *An Act to provide for the regulation of municipal corporations in England and Wales* (a), it is (amongst other things) enacted, that no person shall be qualified to be elected or to be a councillor or an alderman of any borough during such time as he shall have, directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of the council of such borough, during such time as he shall hold any office or place of profit, other than mayor, in the gift or disposal of the council of such borough: [and whereas by another Act passed in the session of parliament held in the third and fourth years of the reign of Her present Majesty, intituled *An Act for the regulation of municipal corporations in Ireland* (b), it is (amongst other things) enacted, that no person shall be qualified to be elected or to be a councillor, or an alderman, or a municipal commissioner of any such borough, during such time as he shall have, directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of any such council, commissioners, or charitable trustees of such borough:] and whereas doubts have arisen as to the extent and meaning of the words, "contract" and "office or place of profit" in the said enactments, and it is expedient that such doubts should be removed: be it therefore enacted, &c., that from and after the passing of this Act the word "contract" in the said respective enactments shall not extend or be construed to extend to any lease, sale, or purchase of any lands, tenements, or hereditaments, or to any agreement for any such lease, sale, or purchase, or for the loan of money, or to any security for the payment of money only.

II. *Members of council not to take part in discussion if pecuniarily interested.]* And be it enacted, that it shall not be lawful for any member of the council of any borough to vote or take part in the discussion of any matter before the council in which such member shall, directly or indirectly, by himself or his partner or partners, have any pecuniary interest.

III. *Persons against whom suits have been commenced for penalties respecting contracts may apply to have the same determined, upon payment of the costs* (c).

IV. *Judges empowered to order suits commenced before 8th February, 1842, to be discontinued, upon payment of costs* (c).

V. *Suits commenced subsequent to 8th February, 1842, to be discontinued, without payment of costs* (c).

(a) 5 & 6 Will. 4, c. 76 (see s. 28), *ante*.

(b) 3 & 4 Vict. c. 76.

(c) Expired.



VI. *Act not to extend to any action in which judgment has passed (d).*

VII. *Councillors, &c., not to be disqualified on account of having an interest in any lease of lands, &c.*] And be it enacted, that from and after the passing of this Act no municipal commissioner, councillor, alderman, or mayor, in any municipal corporation within the provisions of either of the said Acts, shall be deemed to have been or to be disqualified to be elected or to be such municipal commissioner, councillor, alderman, or mayor, by reason only of his having or having had, directly or indirectly, by himself or his partner, any share or interest in any lease, sale, or purchase of any lands, tenements, or hereditaments, or any agreement for any such lease, sale, or purchase, or for the loan of money, or in any security for the payment of money only, but all elections of municipal commissioners, councillors, aldermen, or mayors, as aforesaid, shall be deemed and taken to be and to have been valid (unless in cases where judgment may have been obtained before the passing of this Act), notwithstanding any such share or interest in any matters herein last aforesaid.

VIII. *Office of sheriff not to be deemed an office of profit.*] And be it enacted, that from and after the passing of this Act the office of sheriff of any city, town, county of a city or county of a town (wherein the council are empowered by law to appoint a fit person to execute the office of sheriff), shall not be deemed to be an office or place of profit within the meaning of the said Act so as to create any disqualification for any office in the said Act mentioned.

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## 5 & 6 VICT. CAP. CXI.

An Act to confirm the Incorporation of certain boroughs, and to indemnify such persons as have sustained loss thereby. [12th August, 1842.]

*Confirmation of certain charters and proceedings in pursuance thereof.*] Whereas since the passing of an Act passed in the sixth year of the reign of His late Majesty, intituled *An Act to provide for the regulation of municipal corporations in England and Wales* (e), charters of incorporations have been granted to certain boroughs in England, in pursuance of the provisions of the said Act, and of the Acts afterwards passed for amending the said Act: and whereas doubts have arisen respecting the validity of the said charters, and it is expedient that such doubts be removed: be it declared and enacted, &c., that the said several charters of incorporation, and also all grants of separate courts of sessions of the peace, issued or granted to any of the said boroughs, and all acts or proceedings done or had in pursuance thereof respectively before the passing of this Act, shall be deemed good and lawful from the time of such several grants, acts, and proceedings respectively.

II. *Compensation to certain officers.*] And be it enacted, that every officer of any such borough, or of any county or any division of a county in which any such borough is situated, who was in any office of profit at

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(d) Expired.

(e) 5 & 6 Will. 4, c. 76, ante.

the time of the granting of any such charter of incorporation, or of any grant afterwards made by His late Majesty or by Her Majesty before the passing of this Act, whose office shall have been abolished, or who shall have been removed from his office, or who shall have been deprived of any part of the fees and emoluments of his office, in consequence of any such grant, shall be entitled to have an adequate compensation, to be assessed by the council and paid out of the borough fund, for the salary, fees, and emoluments of the office which he shall so cease to hold, or for such part thereof as he shall have been so deprived of, regard being had to the manner of his appointment to the said office and his term or interest therein, and all other circumstances of the case; and all the provisions of the first-recited Act relating to the claim of any corporate officer for compensation, and to the manner of determining and securing the amount of such compensation, shall apply severally to the officers hereby indemnified: provided always, that the statements to be delivered to the town clerks of the said several boroughs by the said officers shall set forth the fees and emoluments in respect whereof they shall claim compensation during five years next before the several times when the profits of their several offices were first affected by any of the said grants respectively.

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6 & 7 VICT. CAP. LXXXIX.

An Act to amend the Act for the Regulation of Municipal Corporations in England and Wales. [24th August, 1843.]

*No election of a mayor in certain boroughs to be called in question for defect of title unless by quo warranto with twelve months from the election. —All elections of corporate officers not so called in question to be deemed valid.*] Whereas by an Act passed in the fifth and sixth years of the reign of His late Majesty King William the Fourth, intituled *An Act to provide for the regulation of municipal corporations in England and Wales* (a), provisions were made for the election of corporate officers in certain boroughs, and for determining the times and manner of such election; but the provisions in the said Act have not in all cases been duly complied with: and whereas by an Act passed in the first year of the reign of Her present Majesty, intituled *An Act to amend an Act for the regulation of municipal corporations in England and Wales* (b), it was among other things declared, that after the passing of that Act every application to the Court of Queen's Bench, for the purpose of calling upon any person to show by what warrant he claims to exercise the office of mayor, alderman, councillor, or burgess in any borough, shall be made before the end of twelve calendar months after the election, or the time when the person against whom such application shall be directed shall have become disqualified, and not at any subsequent time: and whereas doubts have arisen whether, notwithstanding the said last-mentioned enactment, applications in the nature of *quo warranto* may not still be successfully made against any person holding the office of mayor on the ground that such mayor was not duly qualified to be so elected mayor by reason of some defect or informality in his previous election to the office of alderman or councillor, although more than twelve

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(a) 5 & 6 Will. 4, c. 76, *ante*.

(b) 1 Vict. c. 78 *ante*.

calendar months may have elapsed since such election to the office so alleged to have been informal or defective, and likewise against other corporate officers upon grounds of the like nature; and whereas also in certain boroughs the town councils elected under the said recited Act (c) omitted to appoint as therein directed who of the aldermen first elected under that Act should go out of office at the expiration of the term therein mentioned; and whereas also in some boroughs, at the said first election of aldermen, after the passing of the said first-recited Act, less than the full number required by the said Act were elected to such office by reason of equality of votes as to some of the persons nominated, and at the second election of aldermen, under the provisions of the said first-recited Act, other aldermen were elected to supply and make up such deficiency, but by inadvertence, and under a mistake of law, a greater number were elected to such office than ought to have been so elected, and great inconvenience, vexation, and expense have been incurred and sustained by reason of the premises, inasmuch that the functions of the corporate bodies in such boroughs have been and are in effect suspended; and it is expedient to provide a remedy for such mischief: and whereas the said first-recited Act requires further amendments; be it therefore enacted, &c., that no election of any mayor of any of the boroughs named in schedules (A.) and (B.) of the said first-recited Act, or in any borough to which a charter of incorporation may have been or may be hereafter granted under the provisions of that Act and of the secondly-recited Act, or either of them, which has already taken place, or shall hereafter take place, shall be liable to be questioned by reason of a defect in the title of such person to the office of alderman or councillor to which he may have been previously elected, unless application shall have been made to the Court of Queen's Bench, calling upon such person to show cause by what warrant he claims to exercise such office of alderman or councillor, within twelve calendar months after such his election to the said office of alderman or councillor; and that from and after the passing of this Act every election heretofore made, or hereafter to be made, to the office of mayor, alderman, councillor, or any other corporate officer, in any of the boroughs aforesaid, which shall not be or have been called in question by such application to the Court of Queen's Bench within twelve calendar months from such election, shall be deemed to have been to all intents and purposes a good and valid election.

II. *Provision where a greater number of persons shall have been elected, or claim to be aldermen of any borough than is authorized by 5 & 6 Will. 4, c. 76.*] And be it enacted, that in any and every of the said boroughs where a greater number of persons shall have been elected to and have taken upon themselves the office of aldermen than is authorized by the said first-recited Act, or in which a greater number than is authorized by the said first-recited Act shall claim to be aldermen of the said borough, the council of such borough shall, at the quarterly meeting to be held on the ninth day of November next after the passing of this Act, before proceeding to the election of the mayor, or to any other business, declare which of the said persons so elected or claiming to be aldermen, to the number specified by the said first-recited Act, shall be the aldermen of such borough, and thereupon the persons so declared shall be the aldermen of such borough, and the persons not included in the number so declared shall from thence *ipso facto* cease to be aldermen of the said borough respectively, or to exercise any of the functions of such office.

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(c) i. e. "the said first recited Act."

III. *Provision where no declaration was made in the year 1835, as to which of the aldermen should first go out of office (a).*

IV. *Provisions as to proceedings already commenced (a).*

V. *Provision for expediting certain proceedings by way of mandamus and quo warranto.]* And whereas it is expedient to render certain proceedings, by way of *quo warranto* and *mandamus* so far as they affect corporate offices in boroughs, more summary and expeditious; be it therefore enacted, that from and after the passing of this Act, in all cases of intended application to the Court of Queen's Bench, either for a *mandamus* to proceed to an election of any corporate officer or officers in any of the aforesaid boroughs, or for an information in the nature of a *quo warranto* against any person claiming to be a corporate officer of and in any of the said boroughs, it shall be lawful for the party intending to make such application to give notice in writing thereof to the party to be affected thereby at any time not less than ten days before the day in the said notice specified for making such application, in which notice shall be set forth the name and description of the party by whom such application will be made, together with a statement of the grounds thereof, and at the same time to deliver with such notice a copy of the affidavits whereby the application will be supported; and thereupon it shall be lawful for the said last-mentioned party to show cause in the first instance against such application; and if no sufficient cause be shown it shall be lawful for the said Court of Queen's Bench, on proof of the due service of such notice and statement, and of the delivery of a copy of such affidavits as may be used for the purpose of supporting such application, to make the rule for such *mandamus* or information absolute, if the said court shall so think fit in the first instance, and also, if they shall so think fit, to direct that any writ of *mandamus* thereby ordered to be issued shall be peremptory in the first instance; and also that the venue in any information thereby ordered to be filed shall be laid in the county of Middlesex, or in the city of London, and that the issue or issues of fact thereon, if any, shall be tried at the sittings at *nisi prius* of the said court at Westminster, or in London, by a jury of the same county or city respectively.

VI. *Office of the treasurer not to be subject to annual election, but to be during the pleasure of the council.]* And whereas the office of treasurer of and for the aforesaid boroughs is an office of great trust, and an annual appointment to such office is inconvenient and unnecessary; be it therefore enacted, that so much of the said hereinbefore first-recited Act as provides that the council in every borough shall in every year appoint a fit person to be treasurer of such borough (b) shall be and the same is hereby repealed, and that the council of every borough shall, on the ninth day of November next after the passing of this Act, or on the ninth day of November next after such borough shall be incorporated, appoint a fit person, not being a member of the council, to be the treasurer of such borough, who shall thenceforth hold his office during the pleasure of the council for the time being; and on the happening of any vacancy thereafter, by death, resignation, amotion, or otherwise, the council shall proceed to the appointment of a successor, either

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(a) Expired.

(b) 5 & 6 Will. 4, c. 76, s. 58, *ante*.

at any of the general quarterly meetings of the council, or at a special meeting to be convened for that purpose, so that in no case such appointment be delayed beyond twenty-one days from the happening of the vacancy.

VII. *Provision for the appointment of a deputy recorder in certain cases.*] (c.) And whereas inconvenience has arisen and may hereafter arise by reason that in the said first-recited Act no provision is made for the holding of the borough sessions at the time appointed, by public notice for that purpose, in case of the sudden illness or unexpected and unavoidable absence of the recorder, on or immediately before the day on which the sessions for any borough shall have been appointed to be held, or during the holding of such sessions; and it is desirable to provide against such inconvenience; be it therefore enacted, that so much of the said first-recited Act as provides "that in case of sickness or unavoidable absence the recorder of any borough shall be empowered, under his hand and seal, with the consent of the council of the said borough, to appoint a deputy recorder, being a barrister of five years' standing, to act for him at the quarter sessions then next ensuing, and no longer or otherwise," (c) be and the same is hereby repealed.

VIII. *In case of sickness or absence the recorder may appoint a deputy recorder.*] (d.) And be it enacted, that in case of sickness or unavoidable absence the recorder of any borough shall be and he is hereby empowered, under his hand and seal, to appoint a deputy recorder, being a barrister of five years' standing, to act for him at the quarter sessions then next ensuing or then being held, and not longer or otherwise: provided nevertheless, that such sessions shall not be deemed to have been illegally held, nor the acts of any deputy recorder invalidated, by reason of the cause of the absence of the recorder not being deemed to be unavoidable within the meaning of this Act.

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#### 8 & 9 VICT. CAP. CX.

An Act for the better collecting Borough and Watch Rates in certain Places. [8th August, 1845.]

*Overseers for parts of parishes and places within boroughs to raise district rates.*] Whereas by an Act passed in the sixth year of the reign of his late Majesty, intituled *An Act to provide for the regulation of municipal corporations in England and Wales* (e), authority was given to the councils of boroughs in certain cases to levy borough rates, and also watch rates, for the purposes of the said Act: and whereas the powers and directions given by the said Act, and certain other Acts relating thereto, for the levying, assessing, and collecting such borough rates and watch rate, are found to be insufficient for that purpose: be it enacted, &c., that in every case in which any parish or place liable to support its own poor, or any

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(c) 5 & 6 Will. 4, c. 76, s. 103, *ante*.

(d) See 32 & 33 Vict. c. 22, *post*.

(e) 5 & 6 Will. 4, c. 76; see s. 92, *ante*.

extra-parochial place, shall lie partly within and partly without any such borough, and the council of such borough hath appointed or hereafter shall appoint one or more persons to act as overseer or overseers within that part of such parish or place, or those parts of such parishes or places, which is or are within the same borough, for making, levying, and collecting borough rates or watch rates made or hereafter to be made therein, the person or persons so appointed shall be empowered to levy and raise, by an equal rate or assessment upon all the property within each of the parts of parishes or places respectively for which he or they shall be so appointed, which, if such part were a parish maintaining its own poor, would be rateable to the relief of the poor, such sums of money as shall be required in order to raise the several sums assessed upon such parts of parishes or places respectively, or to reimburse such person or persons as aforesaid such sums of money as he or they shall have paid for any borough rate or watch rate made or hereafter to be made by the council of the borough wherein such part of a parish or place, or parts of parishes and places respectively, shall be situated; such rate or assessment, or respective rates or assessments, to be paid by the occupier or occupiers for the time being of such rateable property as aforesaid; and that the person or persons so appointed or to be appointed to act as such overseer or overseers for the purposes aforesaid, shall have and exercise, in and for the purpose of making, levying and collecting every such rate or assessment as aforesaid, all the powers which by the laws now or hereafter to be in force overseers of the poor have or may have for making, assessing, collecting and recovering rates for the relief of the poor within their several parishes; and every such rate or assessment made or to be made by any person or persons appointed or to be appointed to act as overseer or overseers of the part of any parish or place within any such borough shall, for the purposes of this Act, be called a district rate.

II. *District rates to be allowed and published.*] And be it enacted, that no such district rate, nor any separate rate made by overseers of the poor for raising a watch rate as hereinafter is mentioned, shall be demanded, collected, or payable, until the same shall have been allowed by two or more justices of the peace usually acting in and for such borough, and shall also have been published in like manner as rates for the relief of the poor are by law required to be allowed and published.

III. *Persons aggrieved may appeal.*] Provided always, and be it enacted, that any person who shall think himself aggrieved by any such district rate as aforesaid, or by any separate rate to be made by any overseers of the poor for raising a watch rate as hereinafter is mentioned, may appeal to the recorder of the borough in which such rate has been made, at the next quarter session for the same borough, or, in case there shall be no recorder in such borough, to the justices at the next court of quarter sessions for the county within which such borough is situated, or whereunto it is adjacent; and such recorder or justices respectively shall hear and determine the same, and shall award relief in the premises as in the case of an appeal against any rate made for the relief of the poor.

IV. *District rates to be sufficient to raise the amount required.—Collectors to account.—Surplus of district rate to be paid to the treasurer.—Separate rate made by overseers for raising watch rates to be accounted for, and surplus paid to the treasurer.*] And be it enacted, that every such district rate as aforesaid made for the purpose of raising money to pay or

reimburse any borough rate or watch rate charged by the council of the borough upon such part of a parish or place, and every separate rate to be made by overseers of the poor for raising a watch rate as hereinafter mentioned, may be at such amount or rate in the pound as may be necessary for raising the sum or respective sums so charged by such council, so that no such district rate, or rate for raising a watch rate, exceed twopence in the pound of the annual value of property rateable thereunto, beyond the rate in the pound at which the council of the same borough shall have computed the general borough rate or watch rate so laid or charged by them; and that the person or persons collecting such district rate shall be liable to account as an officer appointed by the council of the borough in or for any part of which he shall act, and shall be liable to the same penalties, remedies, and proceedings in all respects, for refusing or neglecting to account and pay over the monies from time to time remaining in his hands, to which other officers appointed by the council are liable; and in case of there being a surplus in the hands of such person or persons arising from any district rate, above the amount for raising which such district rate was made, then such surplus shall be paid to the treasurer of the borough fund, to the credit of the place within and for which such district rate was made, and go in part of the next rate of the like denomination to be made and laid on such place by the council of such borough; and in regard to separate rates made by overseers of the poor for raising watch rates as is hereinafter mentioned, such overseers shall account for the money collected under or by virtue of such separate rates in like manner as for money collected under rates made for the relief of the poor; and in case of there being a surplus in the hands of such overseer, arising from any such separate rate made for raising a watch rate, above the amount to raise which such separate rate was made, then such surplus shall be paid to the treasurer of the borough fund, to the credit of the place within and for which such separate rate was made, and go in part of the next watch rate to be made and laid on such place by the council of such borough.

V. *Persons rated may be excused on account of poverty.*] And be it enacted, that it shall be lawful for the council of the borough in which any district rate, or any separate rate to be made by overseers of the poor for raising a watch rate as hereinafter mentioned, shall be made, or for any committee of the council appointed for that purpose, on application by or on behalf of any person rated in any such district rate, or rate for raising a watch rate, to be discharged therefrom, and on proof of his or her inability, through poverty, to pay the amount charged upon him or her by such district rate, or rate for raising a watch rate, to order that such person shall be excused from the payment of such district rate, or rate for raising a watch rate, and to strike out his or her name therefrom; and the sum at which such person was so rated in such district rate, or rate for raising a watch rate, shall not thereafter be collected, nor shall any person be charged therewith, or in any manner called or liable to account for the same, or for omitting to collect or receive the same.

VI. *Watch rates to be charged only upon persons liable thereto.*] And be it enacted, that in every case in which a part only of any parish or place liable to maintain its own poor, and situated within any borough, shall be liable to watch rate, the overseers of the poor of such parish or place shall not pay the amount of any watch rate charged by the council of such borough upon such parish or place out of money collected from any rate or

rates for the relief of the poor, but shall make a separate rate or assessment upon the part or parts only of such parish or place liable to watch rates for raising and paying the same watch rate, which rate shall be made in like manner, and under like regulations, and with like means and remedies for recovery thereof, as are herein contained in relation to district rates.

VII. *For recovery of rates.*] And be it enacted, that it shall be lawful for the person or persons appointed or to be appointed to act as overseer or overseers for making, levying, and collecting borough rates and watch rates in the parts of parishes or places situate within the limits and jurisdiction of any city or borough as aforesaid, or any of them, and for the overseers of the poor making any separate rate or assessment for the purpose of raising the amount of any watch rate, by warrant from any two justices of the peace usually acting in and for the borough wherein the parishes, parts of parishes or places, in or for which any district rate, or rate for raising a watch rate, may be made, shall be situated, to levy upon every person who shall refuse to pay the amount assessed or charged upon him or her by any such district rate, or rate for raising a watch rate, according as they shall be assessed, the amount so assessed or charged upon him, her, or them, together with the costs and charges of recovering and enforcing payment of the same, to be ascertained by such justices, by distress and sale of the offender's goods, rendering to the parties the overplus; and in default of such distress it shall be lawful for any two such justices of the peace to commit him or them to the common gaol of or used for the same borough, there to remain, without bail or mainprize, until payment of the said amount and arrearages.

VIII. *Overseer may be appointed for two or more parts of parishes.*] And be it enacted, that whenever there shall be within any borough two or more parishes or places, each separately maintaining its own poor, or two or more extra-parochial places, and each of them partly within and partly without the limits and jurisdiction of such borough, it shall be lawful for the council of such borough to appoint some one person or some two persons to act as overseer or overseers for making, levying, and assessing district rates and watch rates within any two or more of the parts of parishes or places, or within all the parts of parishes or places, lying within the limits and jurisdiction of such borough, without regard to the residence of the person or persons so to be appointed; and every person appointed to act as an overseer for the making, levying, and collecting district or watch rates under the provisions of this Act, and the Acts herein recited, shall be allowed and paid out of the borough fund such allowances or remuneration for his services as the council shall direct.

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## 11 & 12 VICT. CAP. XCIII.

An Act to confirm the Incorporation of certain Boroughs.

[31 August, 1848.]

I. *Certain proceedings in incorporated boroughs before passing of this Act declared good and valid.*] Whereas charters of incorporation have been lately granted to the boroughs of Wolverhampton, Warrington, Wakefield,



Ashton-under-Lyne, and Salford, to extend over certain districts mentioned in such charters respectively, and doubts have arisen respecting the validity of the said charters : and whereas it is expedient that such doubts should be removed : be it therefore declared and enacted, &c., that the said several charters of incorporation, and all elections, acts, or proceedings done or had in pursuance thereof, or by virtue of the same, before the passing of this Act, shall be deemed good and lawful from the time of such several grants, elections, acts, and proceedings respectively, and that the costs and expenses of such charters, elections, acts, and proceedings respectively, shall and may be levied by a rate upon the occupiers of all buildings, lands, and hereditaments within the said several boroughs.

II. *Districts named in charters deemed extent of municipal boroughs.*] And be it enacted, that the districts set forth in the said several charters as those intended to be comprised in such charters respectively shall be deemed and taken to be the extent of such municipal boroughs respectively.

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#### 12 & 13 VICT. CAP. VIII.

An Act to remove Doubts as to the appointment of Overseers in Cities and Boroughs. [22nd March, 1849.]

*Justices of the peace having jurisdiction in certain cities and boroughs to have the exclusive right of appointing overseers.*] Whereas doubts have been entertained as to the proper authority for the appointment of overseers of the poor of the parishes comprised within certain cities and boroughs under the provisions of the Act of the forty-third year of the reign of Queen Elizabeth, intituled *An Act for the relief of the poor (a)*, and it is expedient that such doubts should be removed : be it therefore enacted, &c., that in every city, town corporate, or borough, the justices of the peace having jurisdiction therein shall have the exclusive right of appointing the overseers of the poor of the several parishes, townships, or other places separately maintaining their own poor, or of any parts thereof, within the said cities, towns corporate, and boroughs respectively, in like manner and with the same effect as the justices of any county now have in respect of the overseers of the poor of any parish within such county, and they are hereby required from time to time to make such appointments accordingly.

II. *Repeal of part of the 43 Eliz. c. 2, s. 10.*] And be it enacted, that so much of the said Act as renders the mayor, aldermen, and head officer of any city, town, or place corporate liable, upon the default of the nomination of overseers therein, to lose and forfeit for every such default five pounds, shall be and the same is hereby repealed.

III. *Appointments of overseers in cities and boroughs by justices rendered valid.*] And be it enacted, that the appointments of any overseers of the poor in such cities, towns corporate, or boroughs heretofore made by justices

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(a) 43 Eliz. c. 2.

of the peace therein, without the concurrence of the mayor or other head officer thereof, shall be deemed and taken to be valid, and that every rate or assessment made or to be made, and every other act and thing done or to be done by any overseers so appointed, shall, if otherwise lawful, be valid for all purposes.

IV. *Saving of the city of London and places under local Acts.*] Provided nevertheless, and be it enacted, that this Act shall not apply to the city of London, nor to any of the parishes comprised therein, nor to the appointment of the overseers of any parish, township, or place where such appointment is regulated by the provisions of any local Act.

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12 & 13 VICT. CAP. XVIII.

An Act for the holding of Petty Sessions of the Peace in Boroughs, and for providing places for the holding of such Petty Sessions in Counties and Boroughs. [11th May, 1849.]

*Petty sessions of the peace in boroughs.*] Whereas certain meetings of justices of the peace called petty sessions of the peace are holden in and for certain divisions of the several counties of England and Wales called petty sessional divisions, and important duties have lately been assigned to the justices attending at such petty sessions, and to their clerks, by certain Acts of parliament (a), and it is desirable to declare and enact that the sittings of justices of the peace, or of a stipendiary magistrate, in and for every city, borough, or town corporate having a separate commission of the peace, or for any part thereof, shall be deemed a petty sessions of the peace within the meaning of such Acts, and that buildings or places at which such petty sessions may be holden shall, where necessary, be provided: be it therefore enacted, &c., that every sitting and acting of justices of the peace, or of a stipendiary magistrate, in and for any city, borough, or town corporate having a separate commission of the peace, or any part thereof, within England and Wales, at any police court or other place appointed in that behalf, shall be deemed a petty sessions of the peace, and the district for which the same shall be holden shall be deemed a petty sessional division, within the meaning of any Acts of parliament, already made or hereafter to be made, having relation to such petty session, or to any business to be transacted thereat.

II. *Justices at general or quarter sessions, or the council in boroughs, may provide places for holding petty sessions.*—*The justices or council may agree for the use of the county court for that purpose.*] And be it enacted, that in all cases where at present there are not, or where hereafter there shall not be any fit or proper place for the holding of such petty sessions within any such petty sessional division as aforesaid, in any county, riding, liberty, or division within England and Wales, or within any city, borough, or town corporate within the same, it shall be lawful for the justices of the peace for any such county, riding, liberty, or division, in general or quarter sessions

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(a) See 11 & 12 Vict. cc. 42 and 43.

assembled, and for the council or other governing body in any such city, borough, or town corporate having a separate commission of the peace, respectively, if they shall respectively think fit, from time to time to direct that fit and proper places be hired or otherwise provided for the holding of such petty sessions of the peace within any such petty sessional division as aforesaid, and that the expenses thereof and attendant thereon be paid out of the county rate or borough fund respectively, as the case may be: provided always, that no such direction for hiring or otherwise providing any place for the holding of such petty sessions shall be given by the justices for any such county, riding, liberty, or division so assembled as aforesaid, unless an application in writing for that purpose, signed by the justices of the peace acting in such petty sessional division, or the major part of such justices, shall have been transmitted to the clerk of the peace six weeks at the least before the holding of the general or quarter sessions at which such direction shall be given; and the clerk of the peace shall cause notice of such application to be published in some newspaper circulating in the same county, riding, liberty or division, and in which the advertisements of the county business are usually inserted, fourteen days at the least before the holding of such general or quarter sessions: provided always, that in every such case when it may be so required to provide a fit and proper place for the holding of such petty sessions as aforesaid, if it shall appear to the justices so assembled as aforesaid, or to the council of such city, borough, or town corporate respectively, that the county court for the district is holden in any building or place which would be appropriate for the holding of such petty sessions, it shall be lawful for such justices or council respectively to contract with the treasurer of such county court for the use and occupation thereof or of so much thereof as may be needed for the purposes of such petty sessions, for such time or times, weekly or otherwise, and at such annual rent, and subject to such conditions as to repairs, alterations, or improvements of such building or place, as may be agreed upon.

III. *Justices of the peace of different counties may provide places for holding petty sessions at the joint expense of such counties.*

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#### 12 & 13 VICT. CAP. LXIV.

An Act to remove Doubts as to the authority of Justices of the Peace to act in certain matters relating to the Poor in Cities and Boroughs.  
[28th July, 1849.]

I. *Justices of the peace in cities and boroughs may act in all matters relating to the relief of the poor under the 43 Eliz. (c. 2.) in such cities and boroughs.*] Whereas by the Act of the forty-third year of the reign of Queen Elizabeth, intituled *An Act for the relief of the poor*, authority is given to justices of the peace for counties to act in certain matters relating to the poor, and doubts have been entertained whether the same powers extend to justices of the peace having jurisdiction within cities and boroughs, and it is expedient that such doubts should be removed: be it therefore enacted, &c., that, notwithstanding anything in the said Act contained, all powers and authorities which by the said Act may be exercised out of general or quarter sessions by two or more justices of any county,

may be exercised within any city or borough by any two or more justices of the peace having jurisdiction within such city or borough respectively, as fully in all respects as by the justices of the county in or for any parish of such county.

II. *Acts of the justices in any city or borough confirmed.*] And be it enacted, that nothing heretofore done in any city or borough for the purposes of the said Act by any two or more justices having jurisdiction in such city or borough shall be deemed or taken to have been illegally or insufficiently done by reason only that neither of the said last-mentioned justices was mayor, bailiff, or head officer of such city or borough, but everything so done by such two or more justices, if otherwise lawful, shall be deemed to be and to have been valid to all intents and purposes.

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12 & 13 VICT. CAP. LXV.

An Act to provide a more convenient mode of levying and collecting County Rates, County Police Rates, and District Police Rates in Parishes situated partly within and partly without the limits of Boroughs which are not liable to such Rates. [28th August, 1849.]

*The overseers of parishes situated partly within boroughs and partly without to collect the county rates, county police rates, and district police rates leviable on the part of the parish not comprised within the borough (a).*]. Whereas there are several parishes in England and Wales parts of which are comprised in boroughs not subject to contribute to the county rate or county or district police rate, while the parts out of the borough are liable to contribute thereto: and whereas there are several parishes parts of which are comprised in boroughs which are subject to district, borough, and other rates, while the parts out of the borough are not liable to contribute thereto: be it enacted, &c., that where any parish or place separately maintaining its own poor shall be divided in manner hereinbefore stated, and any county rate (a), or county or district police rate or other rate which may by law be raised in like manner as a county rate, shall be assessable upon the part of the parish or place which is comprised within the county and excluded from the borough, the overseers of such parish or place shall, on receipt of any precept or other lawful demand from the justices of the county, or other due authority in that behalf, demanding the payment of any sum of money as the contribution of the part of such parish or place out of the borough towards any such rate as aforesaid, with all convenient speed assess the sum so required upon the persons liable within such part of the parish or place to pay the poor rate therein, by means of a separate rate, to be made, allowed, and published in like manner as the poor rate, and either by themselves or by the collector of poor rates for the time being appointed for the said parish or place shall

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(a) Sect. 1 of 15 & 16 Vict. c. 81 (*An Act to consolidate and amend the statutes relating to the assessment and collection of county rates in England and Wales*), repeals so much of this section as provides "that the overseers of parishes or places separately maintaining its (*sic*) own poor, and divided in the manner (therein) mentioned should collect the county rates leviable on the part of the parish or place not comprised within the borough."

collect the same separately or with the poor rate payable by the parties assessed thereto, and for the purposes of assessing and collecting the same shall have all such powers, authorities, privileges, protections, and incidents as belong to them in the assessing and collection of the poor rate; and all provisions of the law for enforcing the collection of the poor rate, and recovering the costs of the proceedings therein, shall be applicable to the collection of the rate or rates herein provided for.

II. *Similar provision for the collection of the borough rate in places similarly situated.*] And be it enacted, that in every case in which any such parish or place shall be partly within and partly without any borough, the overseers or other persons charged with the collection of the rates made for the relief of the poor in such parish or place, upon the receipt of any warrant from the mayor, or any justice or justices of the peace, high constable, or other officer duly authorized to act in that behalf within the borough, for the payment of money for the contribution of the part of such parish within such borough towards any district, borough, or other rate (which warrants every such mayor, justice of the peace, high constable, and other officer shall be severally empowered to direct to them in like manner as if the whole of such parish or place were within their borough), shall assess upon and levy from the inhabitants and occupiers of all messuages, lands, tenements, and hereditaments liable to the poor rates in that part of their parish or place which is within the borough, the amount mentioned in the warrant, either as a separate rate or rates, for which the said overseers shall have all the powers which belong to them for levying a rate for the relief of the poor, or with and as part of the poor rate to which the inhabitants and occupiers of property within that part of the parish or place may be liable in common with the inhabitants and occupiers of property within the other part thereof which is not within the borough, and out of the monies so levied and collected shall pay the amount mentioned in the warrant to the person duly authorized to receive the same, and in default thereof shall be subject to all the provisions and penalties provided by this Act, or any Act concerning the non-payment of any borough rate.

III. *Appeal against the rate and audit of the accounts.*] And be it enacted, that any person assessed to any rate made under the authority of this Act, may appeal against the same in like manner, and with the like consequences in all respects, and subject to the same provisions and regulations, as in appeals against the poor rate; and that every overseer and collector shall account for the money levied, collected, and expended under the authority of this Act, to the auditor of the district comprising such parish or place, in like manner as for the poor rate, and if any balance be found to be in his hands shall apply the same towards the next rate required for the purpose of this Act, or shall pay the same to his successor in office; and in default of his so applying the same while in office, or making payment to his successor within seven days after the balance shall have been found, such auditor shall proceed to recover the same from the person holding the same, in like manner as sums certified by him to be due from persons accounting shall from time to time be recoverable, and he shall be paid his costs and expenses, when not recovered from the defendant, by the then overseers of the parish or place, who shall be reimbursed out of the balance of such rate, or if need be out of the next rate.

IV. *Mode of procuring the funds when the precept is sent to the guardians of the union comprising the divided place.*] And be it

enacted, that where a precept shall be issued to the guardians of the union comprising any such parish or place, under the provisions of the Act passed in the eighth year of the reign of Her Majesty, intituled *An Act for facilitating the collection of county rates, and for relieving high constables from attendance at quarter sessions in certain cases, and from certain other duties (a)*, and such precept shall contain a sum to be assessed and charged in respect of any such rate as is herein provided for upon a part of such parish or place as aforesaid, the said guardians may require the overseers of such parish or place to pay to their treasurer a sum of money sufficient to enable the said guardians to pay the sum so assessed, with the other sums mentioned in the said precept, to the treasurer of the county or other person lawfully authorized to receive it; and the said overseers shall pay the amount out of any monies in their possession belonging to the parish or place, or to the part of such parish or place respectively, and reimburse themselves, if necessary, by a rate to be levied as hereinbefore described, upon the persons liable thereto, or if they have no such monies shall forthwith proceed to levy and collect the requisite amount by such rate, and pay the same over to the treasurer of the said guardians: provided, nevertheless, that if such overseers make default and do not make the requisite payment within the appointed time, they shall be subject to be proceeded against in like manner as the overseers of a parish wholly situated within the county are subjected to under the provisions of the said Act.

V. *Where the amount required for the county or other rate is small, the making of the rate for reimbursement may be postponed.*] And be it enacted, that where the amount required in respect of any such county rate, police or district police rate, from any part of such parish or place as aforesaid, shall in the judgment of such overseers be so small as to render the levying and collecting of a separate rate for it inconvenient, the overseers may postpone the reimbursement of themselves for any such advance as aforesaid, and they or their successors may afterwards, on the recurrence of the next precept or other lawful demand, or of that next but one, levy and collect such a rate as aforesaid to raise the whole amount so previously advanced and unsatisfied out of the poor rates of the parish, as well as the amount required by the then precept or demand, and shall apply the sum so collected in reimbursement of the previous payments, and the satisfaction of such precept or demand, and shall apply the balance, if any, towards the discharge of the next precept or demand.

VI. *Repeal of certain part (s. 38,) of 1 Vict. c. 81.*] And be it enacted, that from the twenty-ninth day of September one thousand eight hundred and forty-nine so much of the Act passed in the first year of Her Majesty, intituled *An Act to provide for the levying of rates in boroughs and towns having municipal corporations in England and Wales*, as applies to the making, levying, and collecting the county rate and borough rate in divided parishes or places, except in respect of rates before that time made, levied, or collected, or of any arrears of rates in course of being collected, be repealed, and all balances which may remain over the sums required by the precepts under which the rate was levied shall be applicable towards the discharge of the next county rate or borough rate assessed upon such divided parish or place, and if not so applied by the party holding the same shall be recoverable by the person entitled to receive the same, on complaint

before two justices of the peace of the county having jurisdiction in that part of the parish or place, who shall make an order for the payment of the sum due, to be enforced in like manner and with the like consequences as orders of justices for the payment of money shall be then by law enforceable.

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12 & 13 VICT. CAP. LXXXII.

An Act to relieve Boroughs, in certain cases from Contribution to certain descriptions of County Expenditure. [1st August, 1849.]

*Boroughs having or providing a gaol and house of correction not to be liable to contribute to a county gaol and house of correction, except in a certain manner.*] Whereas by an Act passed in the session of parliament held in the fifth and sixth years of the reign of His Majesty King William the Fourth, intituled *An Act to provide for the regulation of municipal corporations in England and Wales* (b), it was enacted, that within ten days after the grant of a separate court of quarter sessions of the peace to any borough, the council of such borough should send a copy of such grant, sealed with the seal of the borough, to the clerk of the peace of the county in which such borough or any part thereof was situated; and after the grant of such court to any borough it should not be lawful for the justices of the peace of any county wherein such borough or part of such borough was situate to assess any messuages, lands, tenements, or hereditaments within such borough to any county rate thereafter to be made, but every part of every such borough should thenceforward be wholly freed and discharged from contributing, otherwise than was thereinafter provided, to any rate or assessment of any kind of and for the county in which any part of such borough was situated; and it was thereby further enacted, that the treasurer of every county in England and Wales should keep an account of all sums of money received in aid or on account of the county rate, and of the sum of money expended out of the county rate for other purposes than the costs arising out of the prosecution, maintenance, and punishment, conveyance and transport, of offenders committed for trial in such county, and, in case of boroughs having a separate court of quarter sessions of the peace, other than out of coroners' inquests, and should not more than twice a year send a copy of such account to the council of every borough situate within such county in which a separate court of quarter sessions of the peace should be holden, and which before the passing of the Act intituled *An Act to settle and describe the divisions of counties, and the limits of cities and boroughs, in England and Wales, so far as respects the election of members to serve in parliament* (c), was chargeable with or liable to contribute in whole or in part to the county rate of such county, and should make an order on the council of every such borough for the payment of such proportion of such sum as would have been chargeable, after deducting all sums of money received in aid of the county rate as aforesaid, if the said Act had not passed, upon such borough as the same should

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(b) 5 & 6 Will. 4, c. 76, ante.

(c) 2 & 3 Will. 4, c. 64.

be bounded according to the provisions of the said Act; and the council of such borough should forthwith order the same, with all reasonable charges of making and sending the said account, to be paid to the treasurer of such county out of the borough fund: and whereas by an Act passed in the session of parliament held in the fifth and sixth years of the reign of Her present Majesty, and intituled *An Act to amend the laws concerning prisons* (a), it is required that in every borough in which there is or shall be a body corporate, of mayor, aldermen and burgesses under the provisions of the said firstly hereinbefore recited Act, and to which a separate court of sessions of the peace hath been or shall be granted, there shall be one gaol and at least one house of correction (except only where such contracts as in the said Act mentioned have or shall have been entered into by the said mayor, aldermen, and burgesses, and shall be subsisting for the maintenance of prisoners committed from such borough), and every such gaol and house of correction is to be provided and maintained by and at the cost of the same borough: and whereas it is just and expedient that every such borough having, or providing and maintaining, at its separate cost, such gaol and house of correction, should be exempted from paying or contributing to the costs also of providing or erecting and maintaining any new gaol for the county in which the same is situate, except only as is hereinafter excepted: and whereas it is also just and expedient that every such borough having, or providing and maintaining, either alone or jointly with other parties, any sufficient asylum or asylums for the reception and maintenance of its pauper lunatics according to the provisions of an Act passed in the session of parliament held in the eighth and ninth years of Her present Majesty, intituled *An Act to amend the laws for the provision and regulation of pauper lunatic asylums for counties and boroughs, and for the maintenance and care of pauper lunatics in England* (b), should be exempted from paying or contributing to the costs also of providing, erecting, or maintaining any pauper lunatic asylum for the county in which the same borough is situate, and of maintaining the pauper lunatics chargeable thereto: be it enacted &c., that from and after the passing of this Act no borough to which a separate court of quarter sessions of the peace hath or shall have been granted under the provisions of the said firstly recited Act, and which shall possess or provide, or shall have commenced and shall be *bonâ fide* proceeding with the construction of a sufficient gaol and house of correction to the satisfaction of one of Her Majesty's principal secretaries of state for the custody and correction of persons committing offences within such borough, shall, under the provisions of the said first recited Act or otherwise, be charged with or liable to pay or contribute any costs, charges, or expenses to be incurred by any county in which such borough shall be wholly or partly situate, in purchasing or providing a site for or erecting or completing or maintaining any new gaol or house of correction for such county, except only that in calculating the monies which any borough shall be liable to pay or contribute under the provisions of the said firstly recited Act on account of any costs arising out of the prosecution, maintenance, and punishment, conveyance and transport, of any offenders committed for trial to the assizes in such county from the same borough, or, under the provisions of the said Act for the amendment of the laws concerning prisons, on account of the expenses incurred in the conveyance, transport, maintenance, safe custody, and care of any persons committed for offences arising within such borough, and sent to any prison



of the county in which such borough is situate, it shall be lawful for the parties or party making such calculation to include therein such proportion of any monies which shall be paid by the county out of the county rate, or out of any monies received in aid of the county rate (monies borrowed by the county not being considered as monies received in aid of the county rate), on account of the purchase or the providing of a site for, or erection, completion, or maintenance of such gaol or house of correction, or on account of the principal or interest of any monies which shall have been borrowed by the county for such purposes, or any of them, as the number of borough prisoners, which shall have been in custody in any gaol or house of correction belonging to the said county during the period for which such calculation shall be made shall bear to the whole number of prisoners during the same time confined in all the gaols and houses of correction belonging to the said county : provided that nothing in this Act contained shall extend to exempt any such borough from contributing its proportion of any expense heretofore incurred, for any of the purposes aforesaid, by any county in which such borough shall be situate as aforesaid, but every such borough shall remain liable to and pay such proportion thereof as it would have been chargeable with in case this Act had not passed : provided also, that no such borough shall be entitled to or be allowed credit for any share or proportion of any monies to arise or be produced from the sale of any old or unnecessary gaol or house of correction belonging to such county, or of the site thereof, anything in the said firstly recited Act or any other Act contained notwithstanding.

II. *Boroughs having or providing a lunatic asylum not to be liable to contribute to county asylum.*] And be it enacted, that from and after the passing of this Act no such borough as aforesaid which shall possess or provide, or shall have commenced and shall be *bond fide* proceeding with the construction of a sufficient asylum, to the satisfaction of one of Her Majesty's principal secretaries of state, for the reception or care of the pauper lunatics in such borough, in pursuance of the said Act for amending the laws for the provision and regulation of lunatic asylums for counties and boroughs, and for the maintenance and care of pauper lunatics in England, shall be liable to pay or contribute to the payment of any costs, charges, or expenses incident to the future or subsequent purchase, erection, fitting up, or maintenance of any new lunatic asylum by the county in which such borough is situate, or to the payment of any costs, charges, or expenses which may be incurred after such asylum shall be actually opened for the reception or care of the pauper lunatics in such borough, for maintaining any pauper lunatics chargeable to such county.

III. *Providing for cases where settlement of pauper lunatics is unknown (c).*

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(c) Repealed by 18 & 19 Vict. c. 105, s. 14 ; which enacts that "where any pauper lunatic is not settled in the parish by which or at the instance of some officer or officiating clergyman of which he is sent to an asylum, registered hospital, or licensed house, and it cannot be ascertained in what parish such pauper lunatic is settled, and such lunatic was found in a borough having a separate court of quarter sessions of the peace and which is not liable under the Act of the session holden in the fifth and sixth years of King William the Fourth, chapter seventy-six, section one hundred and seventeen, to the payment of a proportion of the sums expended out of the county rate, such lunatic may be adjudged to be chargeable to such borough ; and it shall not be lawful for any justices to adjudge such lunatic to be chargeable to any county, nor to make any order upon the treasurer of any county for the pay-

IV. *Interpretation of Act.*] And be it enacted, that throughout this Act where there shall be nothing in the subject or context repugnant to such construction, words importing the singular number shall include the plural number, and *vice versâ*; and the word "prison" shall include gaol and house of correction.

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13 & 14 VICT. CAP. XLII.

An Act to confirm the Incorporation of certain Boroughs, and to provide for the payment of the expenses of the Incorporation of new Boroughs.  
[29th July, 1850.]

*Section 1, Charters of incorporation (to the boroughs of Halifax, Oldham, and Tynemouth,) and the proceedings thereunder confirmed.*

II. *Districts set forth in such charters to be deemed the extent of municipal boroughs.*

III. *In case of future charters, the costs and expenses may be paid out of the borough rate.*] And be it enacted, that when any charters of incorporation shall hereafter be granted by Her Majesty to any town or borough in England or Wales, in pursuance of the provisions of an Act made and passed in the session of parliament held in the fifth and sixth years of the reign of King William the Fourth, intituled *An Act to provide for the regulation of municipal corporations in England and Wales* (a), or of any Act or Acts which have been or may be passed to amend the same, it shall be lawful for the council of such town or borough to pay the costs and expenses of and in relation to such charter of incorporation, and of and in relation to all elections, Acts, and proceedings under the same, out of any borough rate or borough rates to be made for such town or borough.

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ment of any expenses whatsoever incurred or to be incurred in respect of the said lunatic; and all the provisions in the Lunatic Asylums Act, 1853, as to the mode of determining that a pauper lunatic is chargeable to a county, and as to the order to be made for the maintenance of such pauper lunatic, shall extend and be applied to such borough, as fully and effectually, to all intents and purposes, as if all the said provisions were repeated and re-enacted in this Act, and made applicable to such borough, in the same manner in all respects as though for the purposes of this provision such borough were a separate and distinct county."

(a) 5 & 6 Will. 4, c. 76.

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## 13 &amp; 14 VICT. CAP. LXIV.

An Act to provide for more effectually maintaining, repairing, improving and rebuilding Bridges in Cities and Boroughs. [14th August, 1850.]

*Providing for the repairs and rebuilding of bridges within limits of corporate cities or boroughs.*] Whereas it is expedient that all bridges in any city or borough, which such city or borough, and not the county in which such city or borough is situate, is legally bound to maintain and repair, should be under the sole management and control of the council of such city or borough: and whereas it is also expedient that such council of such city or borough should in certain cases be empowered to borrow on the security of the rate of such city or borough the money which may from time to time be required for the purpose of maintaining, altering, widening, repairing, improving, and rebuilding such bridges: be it therefore enacted, &c., that from and after the passing of this Act every bridge which is either wholly or in part within the limits of any city or borough in which there is or shall be a body corporate, of mayor, aldermen, and burgesses, under the provisions of an Act passed in the sixth year of the reign of his late Majesty, intituled *An Act to provide for the regulation of municipal corporations in England and Wales* (b), or of any charter granted in pursuance of that or of any subsequent Act, and which bridge such city or borough, and not the county in which such city or borough is situate, is legally bound to maintain or repair, shall, as to the whole of such bridge, if the same is wholly within the limits of such city or borough, or as to such part as is within the limits of such city or borough, if part only is within such limits, be maintained, altered, widened, repaired, improved, or rebuilt under the sole management and control of the council of such city or borough.

II. *Councils may direct payment of necessary amount of money out of rates.*] And be it enacted, that for the purposes of this Act such council of any such city or borough, at any meeting of such council, shall have and may exercise all the powers which the justices of the peace of any county at their general or quarter session of the peace, or at any other time, now have and may exercise with respect to any county bridge, or as near thereto as the nature of the case will admit; and that it shall and may be lawful for such council, and they are hereby empowered, to order and direct that such sum or sums of money as shall be necessary for the purposes aforesaid shall be paid, out of the rate of such city or borough, by the treasurer for the time being of such city or borough, at such times and in such manner as to the said council shall seem fit: provided always, that it shall not be necessary for the council of any such city or borough to cause any notice to be given or published in any newspaper in any case in which notice is required to be given or published with respect to county bridges (c).

III. *Council may borrow money for the purpose of maintaining or rebuilding bridges.*] And be it enacted, that when and so often as it shall appear to the council of any such city or borough, at any meeting of such

(b) 5 & 6 Will. 4, c. 76.

(c) For the statutes relating to county bridges see the Chronological Table and Index of Statutes, 2nd Ed. p. 358.

council holden at any time after the passing of this Act, that the amount of any estimate approved of by such council for the maintaining, altering, widening, repairing, improving, or rebuilding of any such bridge or bridges, or any part thereof, or the approaches thereto, which any such city or borough, and not the county in which such city or borough is situate, is legally bound to maintain and repair, shall exceed the sum of one hundred and fifty pounds, it shall and may be lawful for such council and they are hereby empowered, after having first entered a statement of the amount of such estimate in the minute book of the council, to borrow and take up on mortgage of the rate of such city or borough, by an instrument in the form contained in the schedule to this Act annexed marked (A.), or to the like effect, any sum or sums of money not exceeding the amount of such estimate, in sums of not less than fifty pounds each, at interest, as to the said council shall appear necessary and expedient, for the purposes aforesaid or any of them, and to secure every such sum of money so borrowed upon the credit of the said rate; and it shall and may be lawful for such council at any such meeting, and they are hereby authorized and empowered, to treat and agree with any person or persons for the loan of any such sum or sums of money; and every such instrument under the hand of the mayor or other member of the council who shall happen to preside at any such meeting as aforesaid, and under the corporate seal of the said city or borough, shall be and the same is hereby declared to be effectual for securing the money therein expressed to be advanced, with interest thereon, to the person or persons advancing the same, on such terms as in and by such instrument shall be stipulated; and a copy of every such instrument shall be kept by the town clerk of any such city or borough as aforesaid; and it shall and may be lawful for any person or persons who shall be entitled to the money thereby secured, and for his, her, or their executors or administrators, and such person or persons, and his, her, or their executors or administrators are hereby empowered, by endorsing his, her, or their name or names on the back of any such instrument, and by giving notice of such endorsement to the town clerk for the time being, to transfer the same, and his, her, or their right to the principal money and interest thereby secured, unto any person or persons; and every such assignee or assignees, his, her, or their executors or administrators, may in like manner transfer the same again, and so *toties quoties*; and the person or persons to whom any such transfer thereof shall be made, and his, her, or their executors, administrators, or assigns, shall be a creditor or creditors upon the said rate in an equal degree one with another, and shall not have any preference with respect to the priority of any monies so advanced as aforesaid.

IV. *Interest on monies borrowed to be a charge upon the rates.*] And be it enacted, that it shall and may be lawful for such council and they are hereby authorized and required to charge the rate to be raised in such city or borough, not only with the interest of the money so borrowed, but also with the payment of such further sum as shall ensure the payment of the whole of the sum borrowed within fourteen years from the time of borrowing the same, and such sums shall be assessed on such city or borough in such manner as borough rates are directed to be assessed under the laws in force for that purpose, and shall be paid and applied, under the direction of such council, in discharge of the interest, and of so many of the principal sums on the said securities as such money will extend to discharge in each year, until the whole of the money for which such securities shall be made, and the interest thereof, shall be fully paid and discharged; and the council shall and they are hereby required to fix one or more day or days in

each year on which such payment shall be made, and shall give directions for assessments to be made in due time, so as to provide for the regular payment thereof; and the treasurer of such city or borough shall and he is hereby required to keep an exact and regular account of all the receipts and payments under the authority of this Act, in a book or books, separate and apart from all other accounts, and the same to adjust and settle in such manner that it may easily be seen what interest is growing due and what principal money has been discharged, and what remains due, and the books or books so adjusted and settled to lay before the council at every quarterly meeting of such council; and such council shall also and they are hereby required, at every such quarterly meeting, carefully to inspect all such accounts, and to give such orders and directions for carrying the purposes of this Act into execution, in such manner as to them shall seem meet; and such council at such quarterly meeting as aforesaid shall direct in what order such securities shall be discharged, by drawing lots or otherwise, as they shall think fit: provided always, that they shall in the first place discharge all such securities as shall bear the highest rate of interest.

V. *Repair of bridges included within boundaries of municipal boroughs.*] And whereas by the extension of the boundaries of certain boroughs under the provisions of the Act of the fifth and sixth years of King William the Fourth, intituled *An Act to provide for the regulation of municipal corporations in England and Wales* (a), certain bridges and parts of bridges have been included within the boundaries of those cities and boroughs, and are thereby subject to the jurisdiction of such cities or boroughs, which bridges before the passing of such Act were maintained as to the whole or such parts thereof as were within the limits of such cities and boroughs by the inhabitants thereof, and the remaining bridges and parts of bridges which were not situate within such limits were maintained by the inhabitants of the counties or ridings respectively adjoining thereto: and whereas doubts have arisen respecting the future repairs and maintenance of such bridges: be it therefore enacted, that every bridge which is wholly or in part included within the boundary of any such city or borough the inhabitants whereof, before the passing of the said recited Act, were by prescription or otherwise liable to and did maintain the bridges and parts of bridges within their respective cities and boroughs, shall as to the whole of such bridges, if the same is wholly within the limits of such city or borough, or as to such part as is within the limits of such city or borough, if part only is within such limits, be maintained, altered, widened, and repaired, improved or rebuilt, under the sole management and control of the council of such city or borough.

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(a) 5 & 6 Will. 4, c. 76.

The SCHEDULE to which this Act refers.

(A.)

*Form of Mortgage and Charge upon the Borough Rate for securing Money borrowed.*

I *A. B.* [mayor, alderman or councillor, as the case may be,] of the [city or borough of —], and chairman of a certain meeting of the council of the said [city or borough of —, as the case may be,] duly holden at — aforesaid on the — day of — in the year of our Lord — in pursuance of the powers to me given by an Act passed in the — year of the reign of Her Majesty Queen Victoria, intituled [*insert title of Act*], do hereby mortgage and charge all the rates to be raised within the said [city or borough] under the description of borough rates by the laws now in being with the payment of the sum of — pounds, which *C. D.* of — hath proposed and agreed to lend, and hath now actually advanced and paid, towards defraying the expenses of [maintaining, altering, widening, repairing improving, or rebuilding, as the case may be,] a certain bridge called — [or] certain bridges called — and — within the said [city or borough], and the approaches thereto [*as the case may be*]; and I do hereby assign the same unto the said *C. D.*, his executors, administrators, and assigns, for securing the payment of the sum of — pounds, and interest for the same after the rate of — pounds per centum per annum, and do order the treasurer for the said [city or borough] to pay the interest of the said sum of — after the rate aforesaid, half-yearly as the same shall become due, until the principal shall be discharged, pursuant to the directions of the said Act.

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### 13 & 14 VICT. CAP. XCI.

An Act to authorize justices of any borough having a separate gaol to commit assize prisoners to such gaol, and to extend the jurisdiction of borough justices to all offences and matters arising within the borough for which they act.  
[14th August, 1850.]

*Prisoners may be committed to borough gaols for trial at the assizes.]*  
Whereas great inconvenience and expense have been found to result to cities and boroughs having or providing and maintaining at their own cost gaols or houses of correction, from the necessity of committing to the common gaol of the county in which such city or borough may be situated for trial at the assizes holden for such county persons charged with offences committed within the limits of such city or borough, and it is expedient that the law should be altered and amended: and whereas it is also expedient that justices of the peace acting for any city or borough should have the same powers and authorities in all respects with regard to offences committed and matters arising within the limits of such city or borough as justices of the peace for the county within which such city or borough is situated now have with regard to such offences or matters under or by

virtue of any local or general Act of parliament: be it therefore enacted, &c., that from and after the passing of this Act it shall be lawful for any justice of the peace acting for any city or borough now having or providing and maintaining at its own cost, or which shall hereafter have or provide and maintain at its own cost, a gaol or house of correction, to commit for safe custody to such gaol or house of correction, for trial at the assizes to be holden for the county in which such city or borough may be situated, any person charged before him with any offence, except murder, committed within the limits of such city or borough triable at such assizes, and the commitment shall specify that such person is committed under the authority of this Act, and whenever any such person shall be committed to any such gaol or house of correction for trial at such assizes the keeper of such gaol or house of correction shall deliver to the judges of assize a calendar of all prisoners in his custody for trial at such assizes, in the same way that the sheriff of the county (a) would be by law required to do if such prisoners had been committed to the common gaol of the county in which such city or borough may be situated; and the justice or justices by whom any person charged as aforesaid shall be committed shall deliver or cause to be delivered to the proper officer of the court the several recognizances, informations, depositions, and statements relative to such person at the time and in the manner that would be required in case such person had been committed to such county gaol.

II. *Nothing to authorize justices to commit persons charged with murder to any other than the county gaol.—As to expenses incurred in maintenance of last-mentioned prisoners.*] Provided always, and be it enacted, that nothing herein contained shall be construed to give any justice of the peace acting for any city or borough power to commit persons charged with murder to the gaol or house of correction of any city or borough for trial at the assizes to be holden for the county in which such city or borough may be situated, but such justices shall and they are hereby authorized and required to commit all such persons to the common gaol of such county for trial in such and the same manner as if this Act had not passed: provided also, that the expenses properly incurred by such county in the maintenance, safe custody, and care of such last-mentioned prisoners so committed whilst in custody in such county gaol shall be borne and paid by such city or borough in the manner hereinafter provided with respect to prisoners removed to the county gaol for trial at the assizes.

III. *Prisoners committed to borough gaols to be removed to county gaol previous to trial.*] And be it enacted, that all persons who may under the authority of this Act be committed to the gaol or house of correction of any city or borough for trial at the assizes to be holden for the county in which such city or borough may be situated shall in due time be removed by the gaoler or keeper of such gaol or house of correction, with their commitments and detainers, to the common gaol of the county, in order that they may be tried at the assizes to be holden for such county, and such removal shall not be deemed or taken to be an escape.

IV. *Prisoners whilst under removal to be deemed to be in proper legal custody.*] And be it enacted, that every prisoner so removed shall for and during the time of such removal, and also for and during such time as he

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(a) See 28 & 29 Vict. c. 126, s. 62, *post*.

shall be detained in the county gaol, be to all intents and purposes deemed and considered to be in the proper legal custody, notwithstanding he may in effecting such removal have been taken out of the jurisdiction of the city or borough to the gaol or house of correction of which he may have been originally committed into any other jurisdiction, or out of the county in which such gaol or house of correction may be situated into or through any other county or division of a county; and no action or other proceeding shall or may be maintained by such prisoner or by any other person against the gaoler or keeper of the gaol or house of correction of any city or borough, or against the gaoler or keeper of the common gaol of the county, by reason or in consequence of such prisoner having been taken out of the jurisdiction of such city or borough into any other jurisdiction, or out of the county in which such city or borough may be situated into or through any other county or division of a county.

V. *Expenses of prisoners removed to county gaols to be calculated as provided by 5 & 6 Vict. c. 98.*] And be it enacted, that the expenses which shall be incurred by such county in the maintenance, safe custody, and care of every prisoner so removed whilst in custody in such county gaol, shall be calculated upon the same principle and in the same manner as provided by an Act passed in the sixth year of the reign of Her present Majesty, intituled *An Act to amend the laws concerning prisons*, with respect to borough prisoners committed to a county prison where no special contract is subsisting between such borough and county relative to such prisoners; and such expenses, and all other expenses which may be incurred by such county in respect of every such prisoner, shall be paid by the council of such city or borough to the treasurer of such gaol or county; and the amount of all such expenses shall, in case of dispute, be settled by a barrister-at-law in the manner provided by the said Act.

VI. *Account of expenses to be made out and signed by clerk to justices, and sent to town clerk of borough.*] And be it enacted, that an account in writing of the expenses due and payable, or claimed to be due and payable, in respect of the maintenance, safe custody, and care of such prisoners as aforesaid, shall be made out from time to time, and signed by the clerk to the visiting justices of the county gaol to which such prisoners shall have been committed, and delivered to the town clerk of the city or borough within which the offences shall have been committed; and such account shall be conclusive against such city or borough, unless some objection shall be made in writing, and signed by the town clerk of such city or borough, and delivered to the clerk of the said visiting justices, within one calendar month next after such account shall have been delivered to such town clerk.

VII. *In cases of conviction for offences committed within limits of any city, &c., court may commit offender to borough gaol.—In case of commitment of persons.*] And be it enacted, that whenever any person shall be convicted at any assizes of any offence committed within the limits of any city or borough having or providing and maintaining at its own cost a gaol or house of correction, for which offence such person shall be liable either to the punishment of transportation or imprisonment, it shall be lawful for the court, if it shall so think fit, to commit such person to such gaol or house of correction, in execution of his judgment; and in case of the commitment of any person either sentenced to transportation or pardoned for any capital offence on condition of transportation, all the powers, provisions, and authorities for the removal of offenders sentenced to transportation



given or granted by any former Act or Acts of parliament to sheriffs or gaolers shall be and the same are hereby extended and given to the gaoler or keeper of the gaol or house of correction in whose custody such offender shall be.

VIII. *Provisions as to removal before trial to apply to removal after conviction.*] And be it enacted, that all the provisions hereinbefore contained with reference to the removal of prisoners from any city or borough gaol to the county gaol for trial at the assizes shall be applicable and shall be applied to the removal from the county gaol to any city or borough gaol of any prisoner who, having been convicted at the assizes, shall be committed by the court to such gaol or house of correction, in execution of his judgment.

IX. *Borough justices to have the same jurisdiction as county justices under any local Act as to offences committed within the borough.*] And be it enacted, that after the passing of this Act the justices of every city or borough shall have the same jurisdiction with respect to all offences committed and matters arising within such city or borough as the justices of the county in which such city or borough is situate now have under or by virtue of any local or general Act of parliament; and such offences and matters shall be cognizable by one or more of the justices of such city or borough in the same manner as such offences and matters are now cognizable by one or more of the justices of such county: provided always, that in every case in which imprisonment may be awarded for or in respect of any such offences or matters aforesaid, or to enforce payment of any penalty, rate, sum of money, or costs imposed or made payable by or by virtue of any such general or local Act or otherwise, such imprisonment may be awarded to take place in any gaol or house of correction to which the justices of the said city or borough now have or hereafter may have power to commit offenders.

X. *Interpretation of terms.*] And be it enacted, that throughout this Act, where there shall be nothing in the subject or context repugnant to such construction, words importing the singular number only shall include the plural number, and words importing the plural number only shall include the singular number, and words importing the masculine gender only shall include females (a).

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#### 15 VICT. CAP. V.

An Act further to explain and amend the Acts for the Regulation of Municipal Corporations in England and Wales, [and in Ireland.]

[20th April, 1852.]

WHEREAS by an Act passed in the session of parliament holden in the fifth and sixth years of the reign of His late Majesty King William the Fourth, intituled *An Act to provide for the regulation of municipal corporations*

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(a) By sect. 19 of 14 & 15 Vict. c. 55 (*An Act to amend the law relating to the expenses of prosecutions, and to make further provision for the apprehension and trial of offenders in certain cases*), in certain counties of cities and towns, prisoners may be committed and tried at the assizes held for an adjoining county.

*in England and Wales (a), it is (among other things) enacted, that no person shall be qualified to be elected or to be a councillor or an alderman of any borough during such time as he shall have, directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of the council of such borough : [and whereas by another Act passed in the session of parliament holden in the third and fourth years of the reign of Her present Majesty, intituled *An Act for the regulation of municipal corporations in Ireland (b), it is (among other things) enacted, that no person shall be qualified to be elected or to be a councillor, or an alderman, or a municipal commissioner of any borough, during such time as he shall have, directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of any such council, commissioners, or charitable trustees of such borough] : and whereas doubts have arisen whether the said enactments may not be deemed to extend to the persons hereinafter mentioned, and it is expedient that such doubts should be removed : be it therefore enacted, &c.**

I. *Proprietors of newspapers not to be deemed contractors by reason of advertisements.]* That from and after the passing of this Act no person shall be deemed to have had or to have an interest in a contract or employment with, by, or on behalf of such council, commissioners, or trustees, by reason only of his having had or having a share or interest in any newspaper in which any advertisement relating to the affairs of any such borough, council, commissioners, or trustees may have been or may hereafter be inserted.

II. *Suits commenced for certain penalties under recited Acts may be stayed on payment of costs out of pocket (c).*

III. *Suits, &c., renewed or continued may be discontinued on payment of costs out of pocket (c).*

IV. *Court may make order for discontinuing suit, without payment of costs (c).*

V. *Judgments not to be affected.]* That nothing herein contained shall extend to any action, bill, plaint, or information, or any legal proceeding of any kind whatsoever, in which any judgment shall have passed on or before the day of the passing of this Act, but such proceedings may be thereupon had and taken, and any such judgment may be dealt with in all respects, as if this Act had not passed.

VI. *Proprietors of newspapers not disqualified from election to municipal offices by reason of advertisements, &c.]* That from and after the passing of this Act no [municipal commissioner,] councillor, alderman, or mayor, in any municipal corporation within the provisions of either of the said Acts, shall be deemed to have been or to be disqualified to be elected or to be such [municipal commissioner,] councillor, alderman, or mayor, by reason only of his having had or having any share or interest in any newspaper in which any such advertisement as aforesaid may have been or may

(a) 5 & 6 Will. c. 76. (See s. 21.)

(b) 3 & 4 Vict. c. 108.

(c) Expired.

be inserted, but all elections of [municipal commissioners,] councillors, aldermen, or mayors as aforesaid shall be deemed and taken to have been and to be valid (unless in cases where judgment may have been obtained before the passing of this Act) notwithstanding any such share or interest as aforesaid.

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## 15 &amp; 16 VICT. CAP. XXXVIII.

An Act to explain two Acts of the Twelfth and Thirteenth Years of the Reign of Her Majesty, concerning the Appointments of Overseers, and the Authority of Justices of the Peace to act in certain Matters relating to the Poor in Cities and Boroughs. [30th June, 1852.]

*Justices having jurisdiction in other matters in any city or place may act in cases relating to the relief of the poor.*] Whereas by the Act passed in the twelfth year of the reign of Her Majesty, chapter eight, it was enacted, that in every city, town corporate, or borough the justices of the peace having jurisdiction therein should have the exclusive right of appointing the overseers of the poor of the several parishes, townships, or other places separately maintaining their own poor, or of any parts thereof within the said cities, towns corporate, and boroughs respectively, in like manner and with the same effect as the justices of any county then had in respect of the overseers of the poor of any parish within such county: and whereas by another Act of the thirteenth year of the reign of Her Majesty, chapter sixty-four, it was enacted, that all powers and authorities which by the Act of the forty-third year of the reign of Queen Elizabeth, intituled *An Act for the relief of the poor*, may be exercised out of general or quarter sessions by two or more justices of any county, might be exercised within any city or borough by any two or more justices of the peace having jurisdiction within such city or borough respectively as fully in all respects as by the justices of the county in or for any parish of such county: and whereas doubts exist as to the meaning of the said statutes with reference to the justices who are competent to act under and by virtue of the same, and it is expedient that such doubts should be removed: be it therefore enacted and declared, &c. That in any city or borough all justices of the peace, whether of such city or borough, or of the county, riding, or division comprising the same or adjoining thereto, who shall otherwise have jurisdiction to act in any matter arising within such city or borough, shall be deemed to be competent to act therein under and by virtue of the said statutes in all respects.

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## 15 &amp; 16 VICT. CAP. LIV.

An Act further to facilitate and arrange Proceedings in the County Courts.  
[30th June, 1852.]

VII. *On petition to Her Majesty, the jurisdiction of court of local jurisdiction may be excluded from that of the county court in concurrent causes.*] If the council of any city or borough \* \* \* within the limits of which a court of local jurisdiction other than a county court is established, under the \* Act of the ninth and tenth Victoria, chapter ninety-five, or into the limits of which the jurisdiction of such court of local jurisdiction shall extend, shall petition the Queen in council that the jurisdiction of such court of local jurisdiction may be excluded in any causes whereof the county court hath cognizance, and if notice of such petition shall be given two months before it is presented, by public advertisement in such city, (or) borough, \* \* and in some newspaper therein circulated, Her Majesty, by order in council, may declare such exclusion of the jurisdiction of such court of local jurisdiction throughout the whole or any part of the district assigned or which may hereafter be assigned to such county court, if no petition against declaring such exclusion be presented, and no *caveat* be entered at the council office; and if any counter petition be presented, or any *caveat* be entered, then Her Majesty may refer such petition and counter petition to the judicial committee of the privy council, upon whose report Her Majesty may make such order in council as she shall be advised touching the matter of the said petitions, in respect of excluding the jurisdiction of such court of local jurisdiction, and may award compensation to any person or persons entitled to the franchise of appointing officers of such court, or to any officers thereof appointed before the passing of this Act, to be given by the commissioners of Her Majesty's Treasury, who are hereby empowered to pay the same.

## 16 &amp; 17 VICT. CAP. LXXIX.

An Act for making sundry Provisions with respect to Municipal Corporations in England.  
[15th August, 1853.]

WHEREAS the following Acts, to wit, the Acts of the sixth and seventh years of King William the Fourth, chapters one hundred and four and one hundred and five; of the seventh year of King William the Fourth and the first year of Queen Victoria, chapter seventy-eight; of the second and third years of Queen Victoria, chapter twenty-eight; of the third and fourth years of Queen Victoria, chapter twenty-eight; of the fourth and fifth years of Queen Victoria, chapter forty-eight, and of the sixth and seventh years of Queen Victoria, chapter eighty-nine, or some of the provisions thereof respectively, which might properly be made applicable as well to all the municipal corporations in England which have been erected since the passing of the Act of the sixth year of William the Fourth for regulating

municipal corporations in England (*a*), as to the municipal corporations specified in the schedules to that Act, do not apply to such recently erected municipal corporations by reason of those Acts or provisions being restricted in terms to the municipal corporations specified in those schedules: and whereas it is expedient that all Acts relating generally to the municipal corporations in England specified in those schedules should apply as well to all municipal corporations in England erected after the passing of that Act, and that further provision be made with respect to municipal corporations in England: be it therefore enacted, &c.:

I. *Short title.*] This Act may be cited for any purpose as “The Municipal Corporation Act, 1853.”

II. *Acts applying to corporations specified in schedule of 6 & 7 Will. 4, c. 76, to extend to corporations erected after the passing of that Act.*] In every case in which an existing or future Act, passed after the Act of the sixth year of William the Fourth, chapter seventy-six, for the regulation of municipal corporations, or any provision of any such Act, applies generally to the municipal corporations specified in the schedules to that Act, or applies generally to municipal corporations in England, every such Act and every such provision shall (except only so far as by any Act hereafter passed is otherwise expressly provided) extend and apply, not only to every municipal corporation in England specified in those schedules, but also to every municipal corporation in England erected after the passing of that Act of the sixth year of William the Fourth, and whether erected by charter under that Act or otherwise.

III. *For the validity of matters to which newly erected corporations are party or privy.*] Every matter to which any municipal corporation erected after the passing of that Act of the sixth year of William the Fourth has at any time heretofore been or now is party or privy, and which would have been or would now be valid, if any Act or any provision of any Act passed after that Act, applying generally to the municipal corporations specified in the schedules to that Act, or applying generally to municipal corporations in England, but not applying expressly to the municipal corporations then or thereafter so erected, had applied expressly to all municipal corporations then and thereafter so erected, shall to all intents and purposes, both in favour of and against such municipal corporations so erected, be as valid as if every such Act and every such provision had applied expressly to every such municipal corporation then or thereafter so erected.

IV. *Act not to affect actions commenced before 18th March, 1853.*] Provided always, that this Act or anything therein contained, shall not affect any action, suit, or other proceeding at law commenced at any time before the eighteenth day of March, one thousand eight hundred and fifty-three.

V. *Boroughs appointing inspectors of weights and measures not to be liable to contribute to county rate in respect of weights and measures in counties.*] Every city, borough, and town corporate, in which an inspector or inspectors of weights and measures is or are now or hereafter lawfully appointed by the recorder, justices, or others having jurisdiction in this behalf, shall be exempt from contributing to the expense of providing or

transmitting for the use of the county, riding, division, or parts within which such borough or town corporate is situate, copies of the imperial standard weights and measures, or of the stamps to be used by the inspectors, or to the remuneration to the inspectors of weights and measures appointed for such county, riding, division, or parts; and the treasurer of every such county, riding, division, or parts shall, out of the account required by that Act of the sixth year of William the Fourth to be kept by him of all sums of money expended out of the county rate for other purposes than such costs as therein mentioned, exclude such expense and remuneration as aforesaid, in like manner as if the same had been by that Act excepted out of such account; and the amount to be paid to the treasurer of such county, riding, division, or parts by such borough or town corporate shall be varied accordingly.

VI. *Town councillors no longer exempted or disqualified from serving on grand juries in certain boroughs.*] So much of that Act of the sixth year of William the Fourth (a) as exempts or disqualifies members of the council for the time being of every borough in and for which a separate court of quarter sessions of the peace is holden, from serving on the grand jury at the quarter sessions held in and for such borough, is hereby repealed, so far as respects every borough which shall not contain twelve thousand inhabitants according to the last census (b).

VII. *Power to mayors to appoint deputies in certain cases.*] The mayor of every city, borough, and town corporate may from time to time appoint an alderman or councillor of such city, borough, or town corporate to act as the deputy mayor during the illness or absence of the mayor, and every such appointment shall be signified in writing to the council, and shall be recorded in the minutes of their proceedings.

VIII. *Power of deputy appointed by a mayor.*] Every deputy appointed by a mayor under the provisions of this Act may, during the illness or absence of the mayor, lawfully do and perform all Acts which the mayor in his official capacity might himself do and perform: provided always, that no such deputy not being a justice of the peace shall act as a justice of peace or in any judicial capacity, nor shall he preside at any meeting of the council unless specially appointed by the meeting so to do.

IX. *Town clerk to sign notice of meeting to elect a mayor on vacancy.*] If it shall be necessary by reason of the death, resignation, or lawful removal of the mayor to convene a meeting of the council to supply the vacancy, the notice for such meeting shall be signed by the town clerk.

X. *In certain boroughs mayor may appoint a substitute for presiding alderman at elections.*] If in any city, borough, or town corporate the number of aldermen does not exceed the number of wards, the mayor shall, in case of the illness or incapacity to act of any alderman at an election, appoint a councillor (not being a councillor representing or enrolled on the burgess list for the ward within which the election is to take place) to preside at such election.

XI. *Extraordinary vacancy to be filled up ten days after notice to the mayor.*] If an extraordinary vacancy shall happen in the office of councillor, auditor, or assessor, the election to supply such vacancy shall take

place not later than fourteen (c) days after notice shall have been given to the mayor or town clerk by any two burgesses, anything to the contrary notwithstanding.

XII. *Mayor may appoint substitute for a deceased assessor.*] If any extraordinary vacancy shall happen in the office of assessor, the election to supply such vacancy shall be held before the alderman of the ward, the continuing assessor, and such burgess (not being a burgess representing or enrolled on the burgess list for that ward) as the mayor shall by writing under his hand appoint (d).

XIII. *Result of election of aldermen, how to be declared.*] At every election of aldermen the persons, not exceeding the number of aldermen then to be chosen, who shall have the greatest number of votes according to the voting papers signed by the persons entitled to vote at such election, and delivered to and openly read by the mayor, shall be declared by the mayor to be and thereupon shall be duly elected aldermen: provided always, that in every case of an equality of votes the mayor shall have a casting vote.

XIV. *As to matters required to be done by overseers under 6 & 7 Will. 4, c. 76.*] Every matter by that Act of the sixth year of William the Fourth, or by any Act amending the same, directed to be done by the overseers of the poor of any parish, township, or place, may be lawfully done by the major part of such overseers; and whenever any notice is by that Act, or any Act amending the same, required to be given to the overseers of the poor of any parish, township, or place, such notice may be delivered to any one of such overseers, or may be left at his place of abode, or at his office for transacting parochial business.

XV. *Act to extend to cities, &c.*] This Act applies to every city, borough, and town corporate in England specified in the schedules to the Act of the sixth year of William the Fourth, chapter seventy-six, and to every municipal corporation in England erected after the passing of that Act, and whether erected by charter under that Act or otherwise, and shall be construed and executed as if its provisions formed part of that Act, and the Acts from time to time in force amending or extending that Act.

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#### 18 VICT. CAP. XXXI.

An Act to confirm the Incorporation of the Borough of Brighton.  
[15th June, 1855.]

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#### 18 & 19 VICT. CAP. XLVIII.

An Act for the better Administration of Justice in the Cinque Ports.  
[16th July, 1855.]

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(c) 38 & 39 Vict. c. 40, s. 9, *post*, p. cxxiv.

(d) The provisions of this section seems to apply only to ward assessors who are abolished by 35 & 36 Vict. c. 32, s. 31.

## 18 &amp; 19 VICT. CAP. LXX.

An Act for further promoting the Establishment of Free Public Libraries and Museums in Municipal Towns, and for extending it to towns governed under Local Improvement Acts and to Parishes.

[30th July, 1855.]

WHEREAS it is expedient to amend and extend the Public Libraries Act, 1850 (a); be it therefore enacted, &c.

I. The Public Libraries Act, 1850 (a), is hereby repealed, but such repeal shall not invalidate or affect anything already done in pursuance of the same Act; and all libraries and museums established under that Act or the Act thereby repealed (b) shall be considered as having been established under this Act, and the council of any borough which may have adopted the said Act of one thousand eight hundred and fifty, or established a museum under the Act thereby repealed, shall have and may use and exercise all the benefits, privileges, and powers given by this Act; and all monies which have been borrowed by virtue of the said repealed Acts or either of them, and still remaining unpaid, and the interest thereof shall be charged on the borough rates, or a rate to be assessed and recovered in the like manner as a borough rate to be made by virtue of this Act.

II. *Short title of Act.*] In citing this Act for any purposes whatever it shall be sufficient to use the expression "The Public Libraries Act, 1855."

III. *Interpretation of terms.*] In the construction of this Act the following words and expressions shall, unless there be something in the subject or context repugnant to such construction, have the following meanings assigned to them respectively; that is to say, "parish" shall mean every place maintaining its own poor; "vestry" shall mean the inhabitants of the parish lawfully assembled in vestry, or for any of the purposes for which vestries are holden, except in those parishes in which there is a select vestry elected under the Act of the fifty-ninth year of King George the Third, chapter twelve, or under the Act of the first and second years of King William the Fourth, chapter sixty, or under the provisions of any local Act of parliament for the government of any parish by vestries, in which parishes it shall mean such select vestry, and shall also mean any body of persons, by whatever name distinguished, acting by virtue of any Act of parliament, prescription, custom, or otherwise, as or instead of a vestry or select vestry; "ratepayers" shall mean all persons for the time being assessed to rates for the relief of the poor of the parish; "overseers of the poor" shall mean also any persons authorized and required to make and collect the rate for the relief of the poor of the parish, and acting instead of overseers of the poor; "board" shall mean the commissioners, trustees, or other body of persons, by whatever name distinguished, for the time being in office, and acting in the execution of any improvement Act, being an Act for draining, cleansing, paving, lighting, watching, or other



wise improving a place, or for any of those purposes; "improvement rates" shall mean the rates, tolls, rents, income, and other monies whatsoever which under the provisions of any such Improvement Act shall be applicable for the general purposes of such Act.

IV. *Town councils of certain boroughs may adopt this Act if determined by inhabitants.*] The mayor of any municipal borough [of whatever (c)] population shall, on the request of the town council [or on the request in writing of ten ratepayers residing in the borough (d)] convene a public meeting of the burgesses of the borough, in order to determine whether this Act shall be adopted for the municipal borough, and ten days' notice at least of the time, place, and object of the meeting shall be given by affixing the same on or near the door of every church and chapel within the borough, and also by advertising the same in one or more of the newspapers published or circulated within the borough, seven days at least before the day appointed for the meeting; and if at such meeting [more than one-half of the persons present at the meeting (e)] shall determine that this Act ought to be adopted for the borough, the same shall thenceforth take effect and come into operation in such borough, and shall be carried into execution in accordance with the laws for the time being in force relating to the municipal corporation of such borough: provided always, that the mayor, or, in his absence, the chairman of the meeting, shall cause a minute to be made of the resolutions of the meeting, and shall sign the same; and the resolutions so signed shall be conclusive evidence that the meeting was duly convened, and the vote thereat duly taken, and that the minute contains a true account of the proceedings thereat.

V. *Expenses of carrying Act into execution in a borough to be paid out of the borough fund (f).*] And distinct accounts shall be kept of the receipts, payments, and liabilities of the council with reference to the execution of this Act.

XV. (g) *Rates levied not to exceed one penny in the pound.*] The amount of the rate to be levied in any borough, \* \* \* in any one year for the purposes of this Act shall not exceed the sum of one penny in the pound (h).

XVI. *Power to council, to borrow on mortgage.*] For carrying this Act into execution, the council, \* \* \* may, with the approval of her Majesty's Treasury, \* \* \* from time to time borrow at interest, on the security of a mortgage or bond of the borough fund, or of the rates

(c) 29 & 30 Vict. c. 114, s. 6. The statute of 1855 was limited in its application to boroughs, "the population of which, according to the then last census thereof" should "exceed five thousand persons."

(d) *Id.* s. 3.

(e) *Id.* s. 5. The statute of 1855 required a majority of two-thirds of the persons present.

(f) This part of the section is repealed and other provisions are substituted by 29 & 30 Vict. c. 114, s. 2, *post*.

(g) Sections 6 to 14 inclusive, relate to the adoption of the Act in districts within the limits of any Improvement Act and in parishes.

(h) See also 29 & 30 Vict. c. 114, s. 2. This section (15) proceeded to incorporate all the clauses of the Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34) with respect to the manner of making rates, &c., but this provision is repealed by 29 & 30 Vict. c. 114, s. 1.

levied in pursuance of this Act, such sums of money as may be by them respectively required, and the commissioners for carrying into execution the Act of the ninth and tenth years of Her Majesty, chapter eighty, may from time to time advance and lend any such sums of money.

*XVII. Provisions of 8 & 9 Vict. c. 16, as to borrowing extended to this Act.*] The clauses and provisions of "The Companies Clauses Consolidation Act, 1845," with respect to the borrowing of money on mortgage or bond, and the accountability of officers, and the recovery of damages and penalties, so far as such provisions may respectively be applicable to the purposes of this Act, shall be respectively incorporated with this Act.

*XVIII. Lands, &c., may be appropriated, purchased, or rented for the purposes of this Act.*] The council of any borough \* \* \* may from time to time, with the approval of Her Majesty's Treasury, appropriate for the purposes of this Act any lands vested \* \* \* in a borough, in the mayor, aldermen, and burgesses, \* \* \* and the council, \* \* \* may also, with such approval, purchase or rent any lands or any suitable buildings; and the council, \* \* \* may, upon any lands so appropriated, purchased, or rented respectively, erect any buildings suitable for public libraries or museums, or both, or for schools for science or art, and may apply, take down, alter, and extend any buildings for such purposes, and rebuild, repair, and improve the same respectively, and fit up, and supply the same respectively with all requisite furniture, fittings, and conveniences.

*XIX. Provisions of 8 & 9 Vict. c. 18, incorporated with this Act.*] "The Lands Clauses Consolidation Act, 1845," shall be incorporated with this Act; but the council \* \* \* shall not purchase or take any lands otherwise than by agreement.

*XX. Lands, &c., may be sold or exchanged.*] The council \* \* \* may, with the like approval as is required for the purchase of lands, sell any lands vested in the mayor, aldermen, and burgesses \* \* \* for the purposes of this Act, or exchange the same for any lands better adapted for the purposes; and the monies to arise from such sale, or to be received for equality of exchange, or a sufficient part thereof, shall be applied in or towards the purchase of other lands better adapted for such purposes.

*XXI. General management to be vested in council.*] The general management, regulation, and control of such libraries and museums, schools for science and art, shall be, as to any borough, vested in and exercised by the council \* \* \* or such committee as such council may from time to time appoint, the members whereof need not be members of the council \* \* \* who may from time to time purchase and provide the necessary fuel, lighting, and other similar matters, books, newspapers, maps, and specimens of art and science for the use of the library or museum, or school, and cause the same to be bound or repaired when necessary, and appoint salaried officers and servants, and dismiss the same, and make rules and regulations for the safety and use of the libraries and museums, and schools, and for the admission of the public.

*XXII. Property of library, &c., to be vested in council \* \* \*.*] The lands and buildings so to be appropriated, purchased, or rented as aforesaid,

and all other real and personal property whatever presented to or purchased for any library or museum established under this Act, or school, shall be vested, in the case of a borough, in the mayor, aldermen, and burgesses \* \* \*.

XXIII. *If any meeting determine against adoption of Act, no other meeting to be called for a year.*] If any meeting called as aforesaid to determine as to the adoption of this Act for any borough, \* \* \* shall determine against the adoption, no meeting for a similar purpose shall be held for the space of one year at least from the time of holding the previous meeting.

XXIV. *Act may be adopted in the city of London if two-thirds of persons rated to the consolidated rate assembled at a public meeting assent.*

XXV. *Museums to be free.*] The admission to all libraries and museums established under this Act shall be open to the public free of all charge.

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19 & 20 VICT. CAP. LXIX.

An Act to render more effectual the Police in Counties and Boroughs in England and Wales. [21st July 1856.]

WHEREAS an Act was passed in the sessions holden in the second and third years of Her Majesty (chapter ninety-three), *for the establishment of county and district constables by the authority of justices of the peace*, which Act was amended by an Act passed in the session holden in the third and fourth years of Her Majesty, chapter eighty-eight: and whereas a police force has been established under the authority of the said Acts in several counties and parts of counties in England and Wales: and whereas by the Act of the session holden in the fifth and sixth years of King William the Fourth (chapter seventy-six), *to provide for the regulation of municipal corporations in England and Wales*, provision is made for the appointment of constables in all boroughs in England and Wales which are subject to that Act: and whereas, under the said secondly-mentioned Act, power is given to justices of counties and councils of boroughs to agree for the consolidation of the county and borough police establishments: and whereas, for the more effectual prevention and detection of crime, suppression of vagrancy, and maintenance of good order, it is expedient that further provisions should be made for securing an efficient police force throughout England and Wales: be it therefore enacted, &c.

V. (a) *Her Majesty in council, on representations from boroughs, may arrange term of consolidation with counties.—Power to Her Majesty to vary such terms from time to time.*] In case it be represented to one of Her Majesty's principal secretaries of state by the council of any borough, that application has been made by such council to the justices of any county in or adjoining to which such borough is situate, to consolidate the police of such county and borough in the manner provided by the

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(a) Sections 1 to 4 refer to the county constabulary.

fourteenth section of the said Act of the third and fourth years of Her Majesty (a), and that such consolidation has not been effected, it shall be lawful for such principal secretary of state to inquire into the terms of consolidation proposed, and to report thereon to Her Majesty in council; and it shall be lawful for Her Majesty, with the advice of Her privy council, to fix the terms and conditions and date upon and from which such consolidation shall take effect, and thereupon the provisions of such last-mentioned Act shall become applicable as if such consolidation had been effected by an agreement made under the said section, save so far as such provisions relate to the determination of such agreement; and it shall be lawful for Her Majesty, with the advice of Her privy council, at any time and from time to time to vary the terms of any such consolidation, or at any time to determine such consolidation upon such terms as to Her Majesty in council may seem just.

VI. *County Constables to have the like powers, &c., in boroughs as borough constables have in the county.*] The constables of every county appointed under the said Acts of the second and third, and third and fourth years of Her Majesty or either of them, or this Act, shall have, in every borough situate wholly or in part within such county, or within any county or part of a county in which they have authority, all such powers and privileges and be liable to all such duties and responsibilities as the constables appointed for such borough have and are liable to within any such county, and shall obey all such lawful commands as they may from time to time receive from any of the justices of the peace having jurisdiction within any such borough in which they shall be called on to act as constables, for conducting themselves in the execution of their office (b).

VII. *Constables to perform duties connected with the police as directed by justices or watch committees.*] The constables acting under the said Acts of the second and third, and third and fourth years of Her Majesty, and the fifth and sixth years of King William the Fourth, and this Act, or any of the said Acts, shall, in addition to their ordinary duties, perform all such duties connected with the police in their respective \* \* \* boroughs as \* \* \* the watch committees of such respective \* \* \* boroughs, from time to time direct and require (b).

VIII. *Constable not to receive to his own use fees for performance of his duties.*] It shall not be lawful for any constable acting under the said Acts of the second and third, and third and fourth years of Her Majesty, and the fifth and sixth years of King William the Fourth, and this Act, or any of the said Acts (other than a local constable appointed under the said Act of the third and fourth years of Her Majesty), to receive to his own use any fee for the performance of any Act done by him in the execution of his duty as such constable; but this enactment shall not extend to prevent the receipt by any such constable of any fee or other payment legally payable which he may be liable to account for and pay over to the treasurer of the \* \* \* borough, or otherwise for the use of the \* \* \* borough, or which may be payable to, or applied in aid of, any police superannuation fund established or to be established in any borough, under the provisions of the Act of the session holden in the eleventh and twelfth years of Her Majesty, chapter fourteen, or of any local or other Act of parliament.

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(a) *Ante*, p. c.

(b) See 22 & 23 Vict. c. 32, s. 2.

IX. *Borough constables disqualified from voting at certain elections.*] No head or other constable already appointed or hereafter to be appointed for any borough, under the said Act of the fifth and sixth years of King William the Fourth, except special constables, shall, during the time he continues to be such constable, or within six calendar months after he has ceased to be such constable, be capable of giving his vote for the election of any person to any municipal office in such borough, or for the election of a member to serve in parliament for such borough, or any county in or to which such borough is situate, either wholly or in part, or adjoins, or for any borough within any such county, nor shall any such constable, by word message, writing, or in any other manner, endeavour to persuade any elector to give or dissuade any elector from giving his vote for the choice of any person to hold any municipal office in such borough, or to be a member to serve in parliament for any such borough or county; and if any such constable shall offend therein he shall forfeit the sum of ten pounds, to be recovered in any court of competent jurisdiction, by any person who shall sue for the same within six months after the commission of the offence, and one half of the sum recovered shall be paid to the person suing for the same, and the other half to the treasurer of the borough: provided always, that nothing herein contained shall subject any constable to any penalty for any Act done by him at or concerning any of the said elections in the discharge of his duty.

XIV. (c) *Annual statement as to crime in \* boroughs to be furnished to secretary of state.*] The \* \* \* watch committee of every borough shall, in the month of October in every year, transmit to one of Her Majesty's principal secretaries of state a statement, in such form as one of the said secretaries of state may from time to time direct, for the year ending the twenty-ninth day of September then last, of the number of offences reported to the police within such \* borough \* the number of persons apprehended by the police, the nature of the charges against them, the result of the proceedings taken thereupon, and any other particulars relating to the state of crime within such \* borough which such \* watch committee may think it material to furnish, and a classified abstract of all such reports and returns shall be annually prepared and laid before parliament.

XV. *Power to Her Majesty to appoint inspectors for inquiring into state and efficiency of the police in \* boroughs, &c.*] It shall be lawful for Her Majesty, by warrant under Her Royal sign manual, to appoint during Her Majesty's pleasure three persons as inspectors under this Act, to visit and inquire into the state and the efficiency of the police appointed for every \* borough, and whether the provisions of the Acts under which such police are appointed are duly observed and carried into effect, and also into the state of the police stations, charge rooms, cells, or lock-ups, or other premises occupied for the use of such police; and each of the inspectors so appointed shall report generally upon such matters to one of Her Majesty's principal secretaries of state, who shall cause such reports to be laid before parliament; and such inspectors shall be paid, out of such money as may be provided by parliament for the purpose, such salaries and allowances as shall be determined by the commissioners of Her Majesty's Treasury.

XVI. *On certificate of secretary of state that an efficient police has been established in any \* borough, one-fourth of the charge for pay and clothing to be paid by the treasurer.]* Upon the certificate of one of Her Majesty's principal secretaries of state, that the police of any \* borough established under the provisions of the said Acts and this Act, or any of them, has been maintained in a state of efficiency in point of numbers and discipline for the year ending on the twenty-ninth of September then last past, it shall be lawful for the commissioners of Her Majesty's Treasury to pay from time to time, out of the monies provided by parliament for the purpose, such sums towards the expenses of such police for the year mentioned in such certificate as shall not exceed one-fourth of the charge for their pay and clothing, but such payment shall not extend to any additional constables appointed under the nineteenth section of the said Act of the third and fourth years of Her Majesty: provided that before any such certificate shall be finally withheld in respect of the police of any \* borough, the report of the inspector relating to the police of such \* borough shall be sent to the \* \* \* watch committee of such borough, who may address any statement relating thereto to the secretary of state; and in every case in which such certificate is withheld, a statement of the grounds on which the secretary of state has withheld such certificate, together with any such statement of the \* watch committee as aforesaid, shall be laid before parliament;

XVII. *but not to any borough where population does not exceed 5,000, and not consolidated with police of a county.]* No such sum as aforesaid shall be paid towards the pay and clothing of the police of any borough, not being consolidated with the police of a county under the said Act of the third and fourth years of Her Majesty, or this Act, the population of which borough according to the last parliamentary enumeration for the time being does not exceed 5,000.

XXIII. (a) *Provisions 8 & 9 Vict. c. 18, for purpose of purchases of station-houses, &c., by justices incorporated with this Act.]* For facilitating the purchase of lands and tenements for the purposes mentioned in section twelve of the said Act of the third and fourth years of Her Majesty the provisions of "The Lands Clauses Consolidated Act, 1845," except the provisions with respect to the purchase and taking of lands otherwise than by agreement, shall be incorporated with the said Act of the third and fourth years of Her Majesty and this Act; \* \* \* and the powers of providing station houses and strong rooms contained in sections twelve and thirteen of the said Act of the third and fourth years of Her Majesty and this Act (b)

(a) The omitted sections relate chiefly to the places referred to in 3 & 4 Vict. c. 88, s. 20.

(b) Sect. 22 of this Act enacts that "Where a station house or strong room shall have been provided under the said Act of the third and fourth years of Her Majesty, section twelve, for any police district or division within any county in which the provisions of the said Act of the second and third years of Her Majesty have not been put in force throughout the whole of such county before the passing of this Act, and the cost of such station or strong room has been incurred out of or now remains wholly or in part chargeable on the police rate for such police district or division, the justices of the peace for the county wherein such police district or division is situate, at any quarter sessions to be held after the passing of this Act, shall or may purchase such station house or strong room for such sum of money as may be determined by such justices, and hold the same for and on behalf of the county or riding for the purposes of this Act, and pay the purchase monies for the same out of the general county rate for the said county; and where the cost of erecting such

shall extend to authorize the providing of such station houses and strong rooms within any borough lying within or adjoining to the county for which the same may be provided. (c)

XXX. (d) *Interpretation of certain terms.*] The word "county" shall in this Act have the same meaning as is assigned to such word in the said Act of the third and fourth years of Her Majesty, except as to the soke or liberty of Peterborough in the county of Northampton, which for all purposes of this and the several recited Acts shall be deemed and taken to be a county of itself; and the several provisions in this Act and the said recited Acts shall apply and operate in, for, and concerning the said soke or liberty accordingly; and the word "borough" shall mean any city, borough, or place incorporated under the provisions of the said Act of the fifth and sixth years of King William the Fourth, or which has otherwise become subject to the provisions of the same Act; and every part of the Cinque Ports, two ancient towns of Winchelsea and Rye, and their several members and liberties, which is not within the municipal boundaries of a place named in one of the schedules (A.) and (B.) to the last-mentioned Act, shall for the purposes of the said Acts of Her Majesty and this Act be deemed to form a part of the county in which the same is situate, and shall be dealt with, under the said Acts of Her Majesty and this Act, as a liberty, which under the said Acts of Her Majesty, forms part of a county, notwithstanding it may be a member or liberty of a place named in one of the said schedules.

XXXI. 2 & 3 Vict. c. 93, and 3 & 4 Vict. c. 88, and this Act to be as one.] The said Acts of the second and third, and of the third and fourth years of Her Majesty and this Act shall be construed together as one Act.

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## 20 & 21 VICT. CAP. I.

An Act for the Amendment of the Cinque Ports Act. [26th June, 1857.]

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station house or strong room shall at the passing of this Act be chargeable by way of mortgage either wholly or in part on the police rates for such police district or division, it shall be lawful for the said justices to transfer such charge from the police rates leviable in such police district or division to and continue such charges upon the county rate of the county in which such police district or division shall be situate; and the police rates of the said police district or division shall be thenceforth discharged from all future payments in respect of the said station house or strong room; and all mortgages or other instruments then operating by way of charge on the said police rates in respect of such station house or strong room shall be thereafter deemed to be charges on the general county rate of the said county, in the same manner as if the same had been originally charged on such county rate, and such station house or strong room shall thenceforth be the property of the said county for the purposes of this Act.

(c) See also 31 & 32 Vict. c. 22, *post*.

(d) Sect. 24 relates to counties and sects. 25 to 29 to the Cheshire constabulary.

20 & 21 VICT. CAP. X.

An Act to amend the Charter of Incorporation granted to the borough of  
Hanley in the county of Stafford. [13th July, 1857.]

20 & 21 VICT. CAP. L.

An Act to amend the Acts concerning the Municipal Corporations in  
England. [17th August, 1857.]

WHEREAS by section seventy-five of the Act passed in the session holden in the fifth and sixth years of King William the Fourth, chapter seventy-six, *to provide for the regulation of municipal corporations in England and Wales*, it was provided, that the trustees appointed under any Act of parliament for paving, lighting, cleansing, watching, regulating, supplying with water, and improving any borough named in one of the schedules (A.) and (B.) to the Act now in recital, or part thereof, might if it should seem to them expedient, transfer all the powers vested in them as such trustees by any such Act to the body corporate of such borough, and the body corporate of such borough should henceforth be trustee for executing by the council of such borough the several powers and provisions of any such Act of parliament: provided always, that no such transfer should be made of the powers vested by virtue of the Acts mentioned in schedule (E.) to the Act now in recital which relate to the town of Cambridge without the consent of the chancellor, masters, and scholars of the university of Cambridge: and whereas doubts have arisen as to the construction of the said section, and it is expedient to amend the same as hereinafter provided: be it therefore enacted, &c.

I. *Section 75 of 5 & 6 Will. 4, c. 76, repealed.*] The hereinbefore recited enactment shall be repealed, save so far as relates to any transfer made thereunder before the passing of this Act.

II. *Powers, property, and liabilities of trustees for paving, &c., may be, on a grant of a charter of incorporation under 5 & 6 Will. 4, c. 76, transferred to the body corporate of the borough.*] The trustees appointed or acting by or under any Act of parliament for paving, lighting, supplying with water or gas, or cleansing, watching, regulating, or improving, or for providing or maintaining a cemetery or market in or for any borough named in one of the said schedules to the said Act of the fifth and sixth of King William the Fourth, or to which a charter of incorporation has been since the passing of such Act or shall be hereafter granted under the provisions of the said Act or otherwise, or any part of any such borough, and whether the powers of such trustees under any such Act do or do not extend beyond the limits of such borough, may, if it seem to them expedient, at a meeting to be called for that purpose, transfer to the body corporate of such borough all the rights, powers, estates, property, and liabilities of such trustees under any such Act as aforesaid, and such transfer shall be made in writing under the common seal of the said trustees if they be a corporation, or, if not a



corporation, then by deed executed by the trustees or any two of them acting by the authority of and on behalf of such trustees (a); and upon any such transfer being so made the body corporate to whom such transfer is made shall become and be trustee for executing by the council of the borough the several powers and provisions of any such Act as aforesaid, and all the rights, powers, estates, and property vested in the trustees making such transfer shall vest in such body corporate, and all the liabilities and obligations of the said trustees shall stand transferred to and by borne by such body corporate, and the said trustees shall be freed and discharged from all such liabilities and obligations, but nothing herein contained shall authorize any such transfer in the case of the town of Cambridge without the consent required by the said recited enactment.

III. *No transfer to be made without a resolution of the borough council.*] Provided always, that no such transfer as aforesaid shall be made or take effect unless and until the council of the borough have resolved, at a meeting of such council holden and convened in manner required by the said Act of William the Fourth, to accept the same.

IV. *Confirmation of transfers under 5 & 6 Will, 4, c. 76, s. 75, of property and liabilities.*] Where under the hereinbefore recited enactment the trustees under any such Act of parliament as therein mentioned have transferred to the body corporate of any borough the powers vested in such trustees under such Act, and the transfer so made purports to extend to the estates and property vested in such trustees, and their liabilities and obligations on any of such matters, the transfer so made shall be deemed to have been authorized by the said enactment.

V. *All duties imposed upon town clerks of boroughs, &c., by the Act 3 Geo. 4, c. 46, to be performed by the clerks of the peace.*] Whereas by an Act passed in the session of parliament holden in the third year of the reign of His late Majesty King George the Fourth, chapter forty-six, intitled *An Act for the more speedy return and levying of fines, penalties, and forfeitures, and recognizances estreated*, certain duties are imposed upon the town clerks of cities, boroughs, or places in England: from and after the passing of this Act all duties imposed upon town clerks by such Act shall be performed by the clerks of the peace for such cities, boroughs, and places, where the offices of town clerk and clerk of the peace are not united in the same person; and such clerks of the peace are hereby required to make all returns, issue all processes, and do and perform all other acts which are imposed upon town clerks by the said recited Act.

VI. *In boroughs consisting of more than one parish, in case the burgess roll for any parish not made out in any year, previous burgess roll to continue in force for such parish.*] Whereas by an Act passed in the session holden in the seventh year of King William the Fourth and first year of Her Majesty, chapter seventy-eight, to amend an Act for the regulation of municipal corporations in England and Wales, it was enacted, that in every borough in which by reason of and neglect or informality a new burgess roll of the said borough shall not have been made in any year within

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(a) See 35 & 36 Vict. c. 91, *post*.

the time directed by the said Act for the regulation of municipal corporations, the burgess roll which was in force before the time appointed for the revision shall continue in force until such new burgess roll shall have been duly made: and whereas the said recited enactment applies only to any borough in which a new burgess roll shall not have been made as therein mentioned: and whereas it is expedient to provide as to any borough consisting of more parishes than one, wholly or in part within any borough in which a new burgess roll shall have been made out, but in which the burgess list or lists of one or more of such parishes wholly or in part within such borough shall have been omitted: be it enacted, that in every borough consisting of more parishes than one wholly or in part within such borough in which by reason of any neglect or informality a burgess list of any parish or of parts of any parish within such borough shall not have been made out in any year, or in case such burgess list shall not have been revised as required by the said Act for the regulation of municipal corporations, so much of the burgess roll which was in force before the time appointed for the revision as contains the names of the burgesses entitled to vote in respect of property within such parish or part of parish shall continue in force, and be taken to be the list of burgesses entitled to vote in respect of such property until a burgess list for such parish or part of parish shall have been revised and become part of the burgess roll.

VII. *Overseers of the poor to make out burgess roll on or before first day of September in every year.*] Whereas by the fifteenth section of the Act to provide for the regulation of municipal corporations in England and Wales it was enacted, that on the fifth day of September in every year the overseers of the poor of every parish wholly or in part within any borough shall make out a list, to be called "the burgess list," according to the provisions therein contained, and shall deliver the same to the town clerk of the borough on the said fifth day of September in every year, and shall keep a true copy of such lists, to be perused without payment of any fee at all reasonable hours between the fifth and fifteenth days of September in every year, and that the town clerk shall forthwith cause copies of all overseers' lists so delivered to him to be printed, and shall cause a copy of all such lists to be published as therein provided on every day during the week next preceding the fifteenth day of September in every year: and whereas it has been found in populous boroughs that the several matters so required to be done by the town clerk cannot be duly carried into effect within the time so specified in that behalf: be it enacted, that from and after the passing of this Act the overseers of the poor of every parish wholly or in part within any borough shall, on or before the first day of September in every year, instead of on the fifth day of September (a), make out a list, to be called the burgess list, according to the provisions in the said recited section contained, and shall, on or before the said first day of September in every year, instead of on the fifth day of September, deliver the same to the town clerk of the borough, and shall keep a true copy of such lists, to be perused by any person, without payment of any fee, at all reasonable hours between the first and fifteenth days of September in every year, instead of between the fifth and fifteenth days of September.

VIII. *Acts to be construed as one.*] The said Act of King William the Fourth and this Act shall be construed together as one Act.

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(a) See also 32 & 33 Vict. c. 55, s. 3, *post*.

## 21 &amp; 22 VICT. CAP. XLIII.

An Act to amend the Municipal Franchise in certain cases.

[23rd July, 1858.]

WHEREAS by section nineteen of an Act passed in the session holden in the fifty-ninth year of His late Majesty King George the Third, chapter twelve, intituled *An Act to amend the laws for the relief of the poor*, the inhabitants of any parish in vestry assembled are empowered to resolve and direct that the owner or owners of all houses, apartments, or dwellings in such parishes, being the immediate lessor or lessors of the actual occupier or occupiers, which shall respectively be let to the occupiers thereof at any rent or rate not exceeding twenty pounds nor less than six pounds by the year, for any less term than one year, or on any agreement by which the rent shall be reserved or made payable at any shorter period than three months, shall be assessed to the rates for the relief of the poor for or in respect of such houses, apartments, or dwellings, and the outhouses and curtilages thereof, instead of the actual occupiers: and whereas it is doubtful whether in such case such occupier is entitled to any municipal privileges and franchises to which, by virtue of an Act passed in the session of parliament held in the fifth and sixth years of the reign of King William the Fourth<sup>(b)</sup>, intituled *An Act to provide for the regulation of municipal corporations in England and Wales*, he would have been entitled if he himself had been rated and had paid such rate or rates<sup>(c)</sup>: and whereas, when the owner of any tenement is rated to the relief of the poor by virtue of an Act passed in the session of parliament held in the thirteenth and fourteenth years of Her present Majesty, intituled *An Act for the better assessing and collecting the poor rates and highway rates in respect of small tenements*<sup>(d)</sup>, instead of the occupier thereof, and has paid all money due on account of any rate or rates in respect of such tenement, such occupier is entitled to all municipal privileges and franchises to which by virtue of the said recited Act of King William the Fourth he would have been entitled if he himself had been rated and had paid such rate or rates: be it enacted, &c.

I. *Where owner is rated, occupier to be entitled to the same municipal privileges under 5 & 6 Will. 4, c. 76, as if he was rated instead of the owner.*] Where the owner of any such house, apartment, or dwelling in the said first recited Act mentioned shall be rated to the relief of the poor by virtue of section nineteen of the said first-recited Act, instead of the occupier thereof, and such owner shall have paid all money due on account of any rate or rates in respect of such house, apartment, or dwelling, such occupier shall be entitled to all municipal privileges and franchises to which by virtue of the said Act passed in the session of parliament held in the fifth and sixth years of the reign of King William the Fourth<sup>(b)</sup>, intituled *An Act to provide for the regulation of municipal corporations in England and Wales*, he would have been entitled if he himself had been rated and had paid such rate or rates; and if such owner so rated as aforesaid shall not have paid such rate or rates, it shall be lawful for such occupier to

(b) Cap. 76.

(c) See 32 & 33 Vict. c. 55, s. 1, *post*.

(d) 13 & 14 Vict. c. 99. See 32 & 33 Vict. c. 41, ss. 6, 7, 19, *post*.

tender to the overseers of the poor or other person authorized by law to receive the same the amount of any rate or rates then due from such owner in respect of such house, apartment, or dwelling, and such overseer or other person so authorized as aforesaid shall be bound to receive the same, and such occupier shall, on the payment or tender of such amount, be entitled to exercise all such privileges and franchises as hereinbefore mentioned : provided always, that any occupier so paying any rate or rates in respect of any such house, apartment, or dwelling, where the owner is rated to the same, shall be entitled to deduct and retain the amount so paid by him from the next payment of rent to be made by him to such owner, or to recover the same from such owner as money paid to and for the use of such owner, and upon such payment being so made by such occupier, and being by him so deducted or retained from his rent, the production by such owner of the receipt of such occupier for the amount so deducted shall be sufficient proof of such rate or rates having been duly paid (a).

II. *Recited Act and this Act to be read as one.*] So much of the said Act of the fifty-ninth year of His late Majesty King George the Third as remains unrepealed and this Act shall be read and construed together as one Act.

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22 VICT. CAP. XXXV.

An Act to amend the law relating to Municipal Elections.

[19th April, 1859.]

WHEREAS it is expedient that the law relating to municipal elections in England and Wales should be amended: be it enacted, &c.

I. *The division of boroughs into wards may be altered.*] If two-thirds in number of the council of any borough shall agree to petition and the council shall thereupon petition Her Majesty for the division of such borough into wards, or for the alteration of the number and boundaries of the wards into which any borough is or from time to time shall be divided, it shall be lawful for Her Majesty from time to time, if she shall think fit, by advice of Her privy council, to fix the number of wards into which such boroughs shall be divided; and every borough shall be divided into the number of wards mentioned in the order in council made on such petition : provided nevertheless, that notice of every such petition, and of the time when it shall please Her Majesty to order that the same be taken into consideration by Her privy council, shall be published in the *London Gazette* one month at least before such petition shall be so considered.

II. *Barrister may be appointed to set out boundaries of wards.*] The senior judge, or, in case of his absence from the kingdom, the next judge in the commission of assize for the summer circuit (b) next after any such order in council shall have been made, shall appoint a barrister for the purpose

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(a) See 30 & 31 Vict. c. 102, s. 7.

(b) It may be presumed that the circuit within which any such borough is situated must be intended. There is no provision made in case of the illness of the senior judge.

of determining the boundaries of such wards, and apportioning the number of councillors of the borough among such wards as hereinafter mentioned,

III. *Power to set out boundaries of wards.*] The provisions of sections thirty-nine, forty, and forty-two, and so much of section forty-three as remains unrepealed, of the Act of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, shall extend to any such division of a borough into wards, or to any such alteration of the number and boundaries of the wards into which any borough is or may be from time to time divided, and the same sections, and also the provisions of the tenth section of the Act of the seventh year of the reign of His late Majesty King William the Fourth and first of Her Majesty Queen Victoria, chapter seventy-eight, and of the tenth section of the Act of the sixteenth and seventeenth years of the reign of Her Majesty Queen Victoria, chapter seventy-nine, shall apply to every election after such division or alteration; and the barrister so to be appointed as aforesaid shall have all the powers, rights, and privileges mentioned in sections thirty-nine, forty, and forty-two of the said Act of the fifth and sixth years of the reign of His late Majesty King William the Fourth, chapter seventy-six; and the costs and expenses thereby occasioned shall be paid and discharged, and such barrister shall be remunerated at the rate of five guineas for every day he shall be so employed, over and above his travelling and other expenses, out of the borough fund.

#### IV. *Provision for first election after division, &c. (c)*

V. *Town clerk to publish notice.*] Seven days at least before the day fixed for the election of any councillor or councillors, the town clerk shall prepare, sign, and publish a notice in the form contained in schedule (B.) to this Act annexed, or to the like effect, by causing the same to be placed on the door of the town hall and in some other conspicuous parts of the borough or ward for which any such election is to be held (d).

VI. *Nomination of candidates.*] At any election of councillors to be held for any borough or ward any person entitled to vote may nominate for the office of councillor himself (if duly qualified), or any other person or persons so qualified (not exceeding the number of persons to be elected for the borough or ward, as the case may be), and every such nomination shall be in writing, and shall state the christian names and surnames of the persons nominated, with their respective places of abode and descriptions, and shall be signed by the party nominating, and sent to the town clerk at least two whole days (Sunday excluded) before the day of election (e); and the town clerk shall at least one whole day (Sunday excluded) before the said day of election cause the christian names and surnames of the persons so nominated, with such statement of their respective places of abode and descriptions, and with the names of the party nominating them, respectively to be printed and placed on the door of the town hall, and in some other conspicuous parts of the borough or ward for which such election is to be held (d).

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(c) Repealed and other provisions made by 34 & 35 Vict. c. 67, s. 2, *post*.

(d) Repealed by 38 & 39 Vict. c. 40, s. 12, sched. 2, *post*, p. ccxix.

(e) See 32 & 33 Vict. c. 55, s. 7, *post*.

(f) Repealed by 38 & 39 Vict. c. 40, s. 12, sched. 2.

VII. *Nomination papers.*] \* \* \* The town clerk shall provide so many nomination papers as may be required, and, at the request of any person entitled to nominate, shall fill up a nomination paper in due form : provided nevertheless, that such paper shall be signed by the person nominating (a).

VIII. *Election of councillors.*] At any election of councillors to be held for any borough or ward (c):—

1. If the number of persons so nominated shall exceed the number to be elected,

The councillors to be elected shall be elected from the persons so nominated, and from them only :

2. If the number of persons so nominated shall be the same as the number to be elected,

Such persons shall be deemed to be elected ; and the mayor or alderman \* \* (d) as the case may be, shall publish a list of the names of the persons so elected, not later than eleven of the clock in the morning of the said day of election :

3. If the number of persons so nominated shall be less than the number to be elected,

Such persons shall be deemed to be elected : such of the retiring councillors highest on the poll at their election or, if the poll were equal, or there were no poll, such as shall be nominated by the mayor, shall be deemed to be re-elected to make up the number required to be elected : and the mayor or alderman, \* \* (d) as the case may be, shall publish a list of the names of all the persons so elected respectively, not later than eleven of the clock in the morning of the said day of election :

4. If no persons be so nominated,

The retiring councillors shall be deemed to be re-elected, and the mayor or alderman \* \* (d) as the case may be, shall publish a list of the names of all the persons so elected, not later than eleven of the clock in the morning of the said day of election.

IX. *Penalty for personation of voters (e).*

X. *Penalty for forging nomination or voting papers (e).*

XI. *Penalty on persons guilty of bribery at elections (e).*

XII. *Definition of bribery (e).*

XIII. *Appeal (e).*

XIV. *Time limited for proceedings (e).*

(a) Repealed by 38 & 39 Vict. c. 40, s. 12, sched. 2, *post*, p. ccxcix.

(b) This section is to apply to nominations of councillors, auditors, and assessors made under the 38 & 39 Vict. c. 40. See sect. 1, sub-sect. (4), *post*, p. ccxciv.

(c) By this section "two assessors" were required to act with the mayor or alderman ; but so much of it as relates to the assessors is repealed, 35 & 36 Vict. c. 33, s. 21, *post*, p. ccxv.

(d) Sects. 9 to 14 are repealed and other enactments substituted by 35 & 36 Vict. c. 30, *post* ; see sect. 11, and 35 & 36 Vict. c. 33, s. 24, *post*.

XV. *Short title.*] This Act may be cited for any purpose as "The Municipal Corporation Act, 1859."

XVI. *Extent of Act.*] This Act shall apply to every city, borough, and town corporate specified in the schedules to the said first-mentioned Act, and to every municipal corporation in England and Wales erected after the passing of that Act, and whether erected by charter under that Act or otherwise, and shall be construed and executed as if its provisions formed part of that Act, and the Acts from time to time in force amending or extending that Act.

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## SCHEDULES (*d*).

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### SCHEDULE A.

The form of nomination paper given in this schedule was repealed by 35 & 36 Vict. c. 33, which again, as to the form, is repealed by 37 & 38 Vict. c. 40 (*e*), the form of the nomination paper is given in sched. 1 to that Act, form No. 2 (*f*).

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### SCHEDULE B.

*Notice of election of councillors, &c.*] The form given in this schedule is repealed by 38 & 39 Vict. c. 40 (*g*), and a new form given in sched. 1, No. 1 (*h*).

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(*d*) The schedules to this Act are repealed by 37 & 38 Vict. c. 40, s. 12, and sched. 2: pp. ccxcvi, ccxix.

(*e*) See last note.

(*f*) *Post*, p. ccxvii.

(*g*) *Ut supra*.

(*h*) *Post*, p. ccxcii.

## 22 &amp; 23 VICT. CAP. XXXII.

An Act to amend the Law concerning the Police in Counties and Boroughs in England and Wales. [13th August, 1859.]

Be it enacted, &c.—

II. (*a*) *County constables not to be required to act in any borough.*] No constable shall, as such constable, be required to act in any borough having a separate police establishment, except in execution of warrants of justices of such county, or by the order of his chief constable or superintendent; and in all cases of special emergency the chief constable or superintendent, when required so to do by the watch committee of any borough having a separate police establishment, shall have power to direct the county constables to act within such borough; and no constable of any borough having a separate police establishment shall as such constable be required to act out of his borough, except in execution of warrants of justices of such borough, or in pursuance of the directions from the watch committee in case of special emergency (*b*).

III. *County constables not to vote in certain municipal elections.*] No chief or other constable already appointed or hereafter to be appointed for any county, under the Act of the session holden in the second and third years of Her Majesty, chapter ninety-three, or the said Act of the third and fourth years of Her Majesty (*c*), or the said Act of the nineteenth and twentieth years of Her Majesty (*d*), shall, during the time he continues to be such constable, be capable of giving his vote for the election of any person to any municipal office in any borough within such county, or in any other borough in which such constable has authority, nor shall any such constable, by word, message, writing, or in other manner, endeavour to persuade any elector to give, or dissuade any elector from giving, his vote for the choice of any person to hold any municipal office in such borough; and if any such constable shall offend therein he shall forfeit the sum of ten pounds, to be recovered in any court of competent jurisdiction, by any person who shall sue for the same within six months after the commission of the offence, and one half of the sum recovered shall be paid to the person suing for the same, and the other half to the treasurer of the county, to be by him applied for the purposes of the police of the county.

V. (*e*) *Limitation of borough watch rate under 2 & 3 Vict. c. 28, and 3 & 4 Vict. c. 28, repealed.*] So much of the Acts passed in the second and third years of Her Majesty, chapter twenty-eight, for more equally assessing watch rates in certain boroughs, and of the Act passed in the third and fourth years of Her Majesty, chapter twenty-eight, to explain and amend the previously mentioned Act, as provides that the amount of watch rate to be levied by the council of any borough shall not exceed in any one year the

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(*a*) Sec. 1 relates to police districts in counties.

(*b*) See 19 & 20 Vict. c. 69, ss. 6, 7.

(*c*) Cap. 88.

(*d*) Cap. 69.

(*e*) Sec. 4 relates to the county constabulary.



rate or sum of sixpence in the pound, or otherwise limits the discretion of the said council in relation to the amount of such rates, shall be repealed.

VI. *Rates under the said Acts not to exceed 8d. in the pound.*] The watch rates levied under the authority of the said Act (f) may be of any amount, at the discretion of the council, not exceeding in any one year the sum of eightpence in the pound.

VII. 11 & 12 Vict. c. 14, *repealed.*] The Act passed in the session holden in the eleventh and twelfth years of Her Majesty, chapter fourteen, for *authorizing a Borough Police Superannuation Fund*, shall be repealed; but any superannuation fund created or applied under that Act shall be transferred to and form part of the superannuation fund to be created or applied under this Act.

VIII. *Superannuation fund to be provided for constables.*] There shall be deducted from the pay of every constable belonging to the force established in any borough under the Act of the session holden in the fifth and sixth years of King William the Fourth, chapter seventy-six, a sum after such yearly rate as the council of the borough may direct, not exceeding the rate of two pounds ten shillings in a hundred pounds for a year, which sum so deducted, and also the monies accruing from stoppages from any of the said constables during sickness, and fines imposed on any of the said constables for misconduct, and from any portion of the fines imposed by any justice of the peace upon drunken persons, or for assaults upon police constables, and from moieties of fines and penalties awarded to informers (being police constables) on summary convictions as shall be directed by such justice to be paid for the benefit of this fund, and all monies arising from the sale of worn or cast clothing supplied for the use of the said constables, shall from time to time be invested in such manner as the council may direct, and the interest and dividends thereof, or so much of the same as shall not be required for the purposes hereinafter mentioned, shall be likewise invested in the like manner, and accumulate so as to form a superannuation fund, and shall be applied from time to time for payment of such superannuation or retiring allowances or gratuities as may be ordered by the watch committee, as hereinafter provided; and the council shall guarantee the security of the superannuation fund of their borough, and make good out of the borough fund or borough rates any deficiency which may arise in such superannuation fund from the default of any treasurer or other person intrusted with the custody or management thereof.

IX. *Rates of allowance from the said fund.*] It shall be lawful for the watch committee of any borough, with the approbation of the council, to order that any of the said constables who may be worn out or otherwise disabled from infirmity of mind or body be superannuated, and receive thereupon, out of the superannuation fund, a yearly allowance, subject to the following conditions, and not exceeding the following proportions (that is to say); if the constable has served with diligence and fidelity for fifteen years and less than twenty years, an annual sum not more than half his pay; if for twenty years or upwards, an annual sum not more than two-thirds of his pay; provided that if he be under sixty years of age it shall

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(f) *Sic*; it should be "Acts."

not be lawful to grant any such allowance unless upon the certificate of the chief or head constable that the constable to be superannuated is incapable from infirmity of mind or body to discharge the duties of his office; provided also, that if any constable be disabled, from any wound or injury received in the actual execution of the duty of his office, it shall be lawful to grant him any allowance not more than the whole of his pay; but nothing herein contained shall be construed to entitle any constable absolutely to any superannuation allowance, or to prevent his being dismissed without superannuation allowance. (a)

X. *Power to grant gratuities to incapacitated constables who have not served fifteen years.*] It shall be lawful for the watch committee of any borough, if they think fit, with the approbation of the council, and upon the recommendation of the chief or head constable, and upon his certifying that any constable belonging to the police force of the borough who has not served so long as fifteen years is incapable from infirmity of mind or body to discharge the duties of his office, to order that such constable shall receive out of the superannuation fund such sum in gross as a gratuity upon his retirement as to the said watch committee may seem proper. (a)

XI. *Fees received by constables of a borough to be paid to the superannuation fund.*] Any fee payable to any constable appointed for any borough, for the performance of any act done in the execution of his duty as such constable, shall be received in such manner as the watch committee, subject to the approbation of the council, may direct, and shall be paid over to the superannuation fund.

XII. *Provision for insufficiency of superannuation fund.*] If at any time the superannuation fund to be created under this Act for any borough be found insufficient to pay the allowances granted upon it, the amount in which the fund shall from time to time be found insufficient shall be made good from the borough fund, or where such fund be inadequate then from the borough rates.

XIII. *Superannuation fund to vest in borough treasurer.*] The superannuation fund created under this Act in any borough shall vest in the treasurer of the borough, and such treasurer shall keep a separate account of all sums of money by him received and paid in respect of such superannuation fund or for superannuations, and of the several matters for which such sums have been received and paid, and all provisions concerning the keeping, auditing, and publishing, and otherwise in relation to the accounts kept by such treasurer, under the said Act of the fifth and sixth years of King William the Fourth, shall be applied to the accounts kept under this enactment.

XIV. *Moiety of penalty on summary conviction may be directed to be paid for the benefit of superannuation fund.*] That a moiety of any penalty imposed on summary conviction by the Act of the eighteenth and nineteenth years of Her present Majesty (b), intituled *An Act to repeal the Act of the seventeenth and eighteenth years of the reign of Her present Majesty for further regulating the sale of beer and other liquors on the*

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(a) See 28 & 29 Vict. c. 35, ss. 3, 5.

(b) Cap. 118.

*Lord's Day, and to substitute other provisions in lieu thereof (c), may be directed by the justice imposing the penalty to be paid for the benefit of the superannuation fund hereinbefore mentioned of the county or borough according as the offence so punished shall be committed within the limits of the county or borough, and shall be invested and otherwise dealt with accordingly.*

*XV. Provision for payment of allowances heretofore granted.—Rights, &c., under the repealed Act reserved.]* Allowances heretofore granted to constables, or which might have been granted to constables appointed previous to the passing of this Act, under the said Act of the eleventh and twelfth years of Her Majesty (*d*), shall be paid from the superannuation fund to be applicable under this Act; and all constables now appointed in any borough in which the provisions of the said last mentioned Act are now in force shall be entitled to receive from the superannuation fund all such allowances, payable at such times, and with and under the same rights and conditions as they would have been entitled to if this Act had not passed (*e*).

*XVI. How past services of existing constables to be reckoned for superannuation allowance.]* The periods of service during which constables have been subjected to deductions from their pay towards a superannuation fund under the said Act of the eleventh and twelfth years of Her Majesty (*d*) shall, in determining what superannuation allowances may be granted to them, be reckoned and allowed to such constables, and in the case of constables permanently appointed in any borough for which no superannuation fund has been provided, and from whose pay no such deduction has been paid, one-half only of the respective period of service of such constables before the passing of this Act shall be reckoned or allowed to such constables in determining what superannuation allowance may be granted under this Act.

*XVII. Provision for the case of consolidation of county and borough police.]* On the consolidation of the police of any borough with the police of any county, under the provisions of the Act of the session holden in the third and fourth years of Her Majesty, chapter eighty-eight, the superannuation allowance previously granted to any borough constable shall be charged on the borough fund or the borough rates of the borough, and the superannuation allowance to be thereafter granted to any borough constable transferred under such consolidation shall be charged upon the superannuation fund of the county; and in determining the amount of any such allowance the period of service of any such constable in the borough shall be reckoned as if the same had been in the county police; and this charge, and the disposal of the borough superannuation fund, shall form a part of the agreement to be entered into on the consolidation.

*XIX. (f) On promotion of constables from one force to another, half of past service may be reckoned as service in the latter force.]* In order to provide the most meritorious and fit men to fill the superior ranks in the police, any constable or officer promoted from one force to another \* of

(c) Repealed and similar provisions enacted by 35 & 36 Vict. c. 94; see s. 66.

(d) Cap. 14.

(e) See 28 & 29 Vict. c. 35, s. 5, *post*.

(f) Sect. 18 relates to county police.

\* a borough, who shall have served in his last force for a period of seven years, shall, for the purposes of superannuation reckon as service in the force to which he is promoted one-half of the period of his previous service, provided that the promotion be made \* \* \* in the case of a borough constable on the recommendation of the head constable of the borough with the sanction of the council, and that \* the service be formally certified at the time of promotion.

XX. *Gratuities to widows of constables dying in service.*] The \* \* watch committee, subject to the approbation of the council for any borough, may, upon the recommendation of the chief or head constable, grant a gratuity out of the superannuation fund of their \* borough to the widow of any constable who has died in the service, provided the sum so granted do not exceed the amount of one year's pay of such constable, and that he have contributed to the superannuation fund for a period of not less than three years.

XXI. *Act not to apply, as to superannuation fund, to places where such a fund has been already established.*] None of the provisions of this Act relating to a police superannuation fund, or contributions thereto or payments thereout, shall apply to any \* city or borough in which a police superannuation fund, has at the time of the passing of this Act been established under the provisions of any local Act now in force.

XXIV. *(a) Gratuities may be granted as reward for good service to police out of police rates, &c.*] The \* \* \* watch committee, subject to the approbation of the council of every borough may, upon the recommendation \* \* \* of the superintendent of police for the said borough, grant to any constable in the said \* borough, out of the police rate or borough fund, a gratuity in money not exceeding three pounds, in respect of and as a reward for any meritorious act done by the said constable in the execution of his duty.

XXV. *Embezzlement by constables punishable under 2 & 3 Will. 4, c. 4.*] All the penalties and provisions of the Act passed in the second and third years of King William the Fourth, chapter four, *for more effectually preventing embezzlements by persons employed in the public service of his Majesty*, shall extend and be applicable to constables and other persons employed in the police of any \* city, borough, district or place whatsoever, in like manner as to any person employed in the public service of Her Majesty within the meaning of that Act, and for all the purposes of the said Act the employment of constable or any other such employment in the police shall be deemed an employment in the public service of Her Majesty.

XXVI. *Power to suspend constables.*] The \* \* \* watch committee of any city, borough, district, or place \* are hereby empowered to suspend any constable within their \* jurisdiction, whom \* they shall think remiss or negligent in the discharge of his duty or otherwise unfit for the same; and the said \* watch committee \* are hereby also empowered, at \* their discretion, to fine any such constable in a sum of money not exceeding one week's pay, and to reduce the said

constable from a superior to an inferior rank, such fine and reduction in rank to be in addition to any other punishment to which the said constable may be liable; and all punishment, penalties, and fines, such as above enumerated, heretofore imposed or inflicted under rules framed under and by virtue of the third section of the Act of the second and third Victoria, chapter ninety-three, shall be deemed to have been legally imposed or inflicted.

XXVII. *Inspectors under 19 & 20 Vict. c. 69, still entitled to half-pay.*] The office or employment of inspector under the Act of the nineteenth and twentieth years of Her Majesty, chapter sixty-nine, shall not prevent the holder thereof from receiving any half-pay to which, if he did not hold such office or employment, he might be or become entitled.

XXVIII. *Repeal of 3 & 4 Vict. c. 88, as to local constables.*

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## 22 & 23 VICT. CAP. LVI.

An Act to amend the Act of the fifth and sixth years of King William the Fourth, chapter sixty-three, relating to Weights and Measures.  
[13th August, 1859.]

WHEREAS it is expedient that the Act passed in the sessions holden in the fifth and sixth years of the reign of King William the Fourth, chapter sixty-three, intituled *An Act to repeal an Act of the fourth and fifth years of His present Majesty, relating to weights and measures, and to make other provisions instead thereof*, should be amended: be it therefore enacted, &c.:

IV. *Municipal corporations to appoint inspectors of weights and measures.*] And whereas doubts have arisen as to the authority by or under which inspectors and examiners of weights and measures in certain municipal boroughs have been heretofore authorized and appointed: be it therefore enacted, that the town councils of all municipal boroughs in England and Wales incorporated under the provisions of the statute passed in the fifth and sixth years of the reign of His late Majesty King William the Fourth (b), intituled *An Act to provide for the regulation of municipal corporations in England and Wales*, or any Act for the amendment thereof, to which a separate court of quarter sessions has been granted, shall have respectively, and they are hereby authorized and empowered henceforth to use and exercise, solely within their respective boroughs, all and every the powers and authorities concerning weights and measures, and the providing of copies of the imperial standard weights and measures verified and stamped at the exchequer, and the inspection, examination, and seizure of all unjust weights and measures, and the appointment and authorization of such inspectors and examiners, as are by law now vested in, used and exercised by, any justices of the peace assembled at their general or quarter sessions in any county in England and Wales, within the limits of their commission, under or by virtue of the statute passed in the fifth and sixth years of the reign of His said late Majesty (c), intituled *An Act to repeal an Act of the*

*fifth and sixth years of His present Majesty, relating to weights and measures, and to make other provisions instead thereof, or under or by virtue of any other law or statute whatsoever; and that such inspectors and examiners so appointed by such town councils as aforesaid, and duly authorized by warrant or other authority in writing under the hand of the mayor of any such borough for the time being, and under the corporate common seal of any such town council as aforesaid, shall have, possess, and exercise the same or the like powers of entering shops, stores, warehouses, manufactories, stalls, yards, and places, within any such borough, and of examining, comparing, trying, and seizing any such weights or measures, as are now had, possessed, or exercised by any inspectors or examiners authorized or appointed in counties by such justices as aforesaid, under or by virtue of the statute lastly hereinbefore referred to, or under or by virtue of any law or statute whatsoever; and all the penal and other provisions of such statute or of any such statutes, so far as they are not repugnant to or inconsistent with this enactment, shall apply to all such boroughs, town councils, inspectors, and examiners respectively, and to all weights and measures used or to be used in such boroughs respectively, and to the examination, comparison, trial, and seizure thereof; and every such council shall and lawfully may pay from time to time to such inspectors and examiners so appointed by them respectively out of the borough funds or borough rates of such boroughs respectively, such salaries, wages, or allowances as each such council respectively shall deem reasonable, and also out of the same funds or rates shall pay and defray all costs incidental to the providing of the said copies of the imperial standard weights and measures, and of carrying out the said last-mentioned Act and this Act within such boroughs; and all fees, penalties, and monies which but for this Act would have been payable to the county stock or fund shall be paid into and go in aid of the borough fund of such borough: on the exercise of any of such powers by the town council of any such municipal borough, and on written notice under the corporate common seal of such borough being given of the exercise of any of such powers to the clerk of the peace of the county, riding, or division in which such borough shall be situate, and after the expiration of one calendar month from the day on which such notice shall be given or left at the office of the said clerk of the peace, all the powers and authorities of all inspectors or examiners appointed by the justices of the peace at their general quarter sessions of the peace for such county, riding, or division, shall, as to such borough, and all weights and measures therein, cease and be absolutely at an end.*

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## 23 VICT. CAP. XVI.

An Act to make further provision concerning Mortgages and other Dispositions of Property belonging to Municipal Corporations in England [and Ireland (a)]. [15th May, 1860.]

WHEREAS it is expedient to make further provision concerning mortgages and other dispositions of property belonging to municipal corporations: be it therefore enacted, &c. :

I. *Treasury, in approving mortgages by municipal corporations, may require money borrowed to be repaid within a limited time, by instalments or by a sinking fund, or by both.*] In any case where the commissioners of Her Majesty's Treasury approve of any mortgage of any hereditaments of the body corporate of any borough (b), the said commissioners may, as a condition of their approval, require that the money borrowed on the security of such mortgage shall be repaid, with all interest thereon, in thirty years, or any less period, and either by instalments or by means of a sinking fund or both as the said commissioners may think fit; and in every such case the sums required for providing for the repayment of the principal and interest of the money borrowed shall by virtue of this Act become charged upon the hereditaments comprised in such mortgage (without prejudice to the security thereby created), or any other hereditaments (if any) of the said body corporate, or the borough fund, or the borough or other rates legally applicable for the payment or discharge of the money borrowed, or the expenses which such money may be borrowed to defray, or on all or any of the securities as aforesaid, as the said commissioners may direct.

II. *How sinking fund to be raised.*] When any money to be borrowed as aforesaid is directed to be repaid by means of a sinking fund, the council of the borough shall, out of the rents and profits of the hereditaments, or out of the borough fund or rates on which the sums required for such sinking fund are charged under this Act, invest or cause to be invested such sums, and at such times and in such government annuities as the said commissioners may direct, and shall also from time to time invest or cause to be invested in like manner all dividends of such annuities, so as to accumulate at compound interest, and all annuities in which such investments are made, shall in the books of the governor and company of the Bank of England \* \* \* be placed to the account of the body corporate and *In the Matter of the Municipal Corporation Mortgages, &c., Act, 1860*, and the dividends of such annuities shall be paid to such person or persons as the said council by power of attorney under the corporate seal of the borough from time to time appoint, and shall be invested as herein directed; but the annuities to be purchased shall not be sold or transferred without the consent in writing of the said commissioners addressed to the chief accountant of the Bank of England \* \* \* and the direction in writing of the council of the borough by power of attorney under the cor-

(a) The enactments relating to Ireland are omitted.

(b) See 5 & 6 Will. 4, c. 76, s. 94; and 6 & 7 Will. 4, c. 104, *ante*. See also 32 & 33 Vict. c. 53, s. 2, *post*.

porate seal of the borough, with such consent in writing of the said commissioners, shall be sufficient authority to the governor and company of the Bank of England \* \* \* for permitting the transfer of such annuities or any part thereof.

III. *When money paid into the bank, under any Act of parliament, for purchase of lands, &c., of a municipal corporation, is paid out, Treasury may require provision to be made for replacing the amount.—Not to apply to money when provision for its application is contained in any local Act.]* Where any purchase money or compensation has been paid into the Bank of England \* under any Act of parliament in respect of any hereditaments, or any interest therein, purchased or taken from any such body corporate, or in respect of any permanent damage to any land of any such body corporate, and the said commissioners approve of the payment of such money or compensation, or of any money to arise from the sale of any government securities in which the same may have been invested, to such body corporate or their treasurer, the said commissioners may, as a condition of their approval, require provision to be made for raising in manner hereinbefore provided with respect to a sinking fund for repayment of money borrowed on mortgage, and investing in government annuities a sum equivalent to the amount of money so paid to such body corporate or their treasurer; and the provisions hereinbefore contained in the case of a sinking fund, as to the mode of investing, payment of dividends, and transfer of annuities, shall be applicable in the case of investments under this provision; and the said commissioners shall, when it appears to them that an amount of annuities equivalent to the amount paid as aforesaid has been raised by investment under this enactment, direct that the accumulation shall cease; and such annuities and the dividends thereof shall thenceforth be applicable as the same would have been if such annuities had arisen from investment under the Act of parliament under which such purchase money or compensation as aforesaid became payable: provided always, that this section shall not apply to any money payable to a body corporate, when provision for the application of such money, or of the price or compensation from which such money has been derived, is contained in any local Act of parliament relating thereto, and the money is to be paid to such body corporate, to be applied in conformity with such provision.

IV. *Treasury may, where they authorize a sale of land of any municipal corporation, direct investment of proceeds.]* Where the said commissioners approve of the sale of any hereditaments, or any interest therein, of any such body corporate, their approval may be subject to such conditions for and in relation to the investment of the proceeds of such sale for the benefit of such body corporate as the said commissioners may see fit, and where they direct the same to be invested in government annuities, the provisions hereinbefore contained as to the mode of investing, payment of dividends, and transfer of such annuities, shall be applicable, but not so as to render necessary any accumulation; or if the said commissioners see fit to consent to the application of the proceeds of such sale or any part thereof for the benefit of the inhabitants of the borough, they may, as a condition of their consent require the like provision to be made as they are authorized to require in the case of their approval of payment to any such body corporate or their treasurer as hereinbefore mentioned; and this enactment shall apply as well to any money received for equality of



exchange by any such body corporate as to the proceeds of the sale of any hereditaments or interest in hereditaments of any such body corporate.

V. *Power to apply certain investments for the benefit of the borough.—* *Proviso, setting aside, in certain cases, direction as to investment of proceeds.]* The said commissioners may at any time consent to the application of any annuities arising from investments under either of the two last preceding sections, or of the monies to arise from the sale thereof or any part thereof respectively, for the benefit of the inhabitants of the borough, and as a condition of their consent may require the like provision to be made as they are authorized to require in the case of their approval of payment to any such body corporate or their treasurer as hereinbefore mentioned, and so from time to time, as often as the said commissioners think fit, and the provisions of this Act shall be applicable accordingly: provided always, that nothing in this Act shall be deemed to make it imperative on the said commissioners to require such provision as aforesaid as a condition of their assent to the application of such annuities or monies, or to the payment of any purchase money or compensation in respect of hereditaments of a body corporate (or money to arise from the sale of investments thereof), to such body corporate or its treasurer, where, by reason of the application of such annuities or monies to improvement of the property of such body corporate, or for the permanent benefit of the borough or otherwise, under the special circumstances of the case, the commissioners in their discretion think fit to dispense with such provision.

VI. *Provision for cases of mortgage, &c., before the passing of this Act.]* Where before the passing of this Act the commissioners of Her Majesty's Treasury have approved of any mortgage of the hereditaments of the body corporate of any borough, and on such approval have required a sinking fund to be formed from time to time in the name of trustees, or have approved of the payment to any such body corporate or their treasurer of any such purchase money or compensation as aforesaid, or of any money arising from the sale of any government securities in which the same may have been invested, and have on such approval required provision to be made for raising, by means of investments in the names of trustees, an amount equivalent to the amount paid with such approval to such body corporate or their treasurer, or have approved of the sale or alienation of any hereditaments or interest therein of any such body corporate, and have required on such approval the investment of the proceeds of such sale in the names of trustees, the said commissioners may require any securities in which any such investments may have been already made to be transferred into the name of such body, and *In the matter of the Municipal Corporation Mortgages, &c., Act, 1860*, or may require any money applicable for the purposes of such sinking fund to be invested in the purchase of government annuities in the name of such body, and *In the matter of the Municipal Corporation Mortgages, &c., Act, 1860*, and the order in writing of the said commissioners for that purpose shall be a sufficient discharge to such trustees from all claims in respect of the transfer of such securities in pursuance of such order, and the said commissioners may in the respective cases aforesaid give such directions as they might give in the analogous cases hereinbefore provided for, arising after the passing of this Act, or as near thereto as the circumstances of the case may require, and the provisions of this Act shall be applicable accordingly.

VII. *Penalty for misappropriation of monies, as stated in 20 & 21 Vict. c. 54.*] If any person authorized to receive the monies to arise from the sale of any annuities or securities purchased or transferred under this Act, or any dividends, or any other such money as aforesaid, appropriate the same otherwise than as directed by this Act, or by the said commissioners in pursuance thereof, he shall be guilty of a misdemeanor, and shall be subject in respect thereof to the provisions of the Act of the sessions holden in the twentieth and twenty-first years of Her Majesty, chapter fifty-four, applicable to any person guilty of a misdemeanor under that Act.

VIII. *Councils of cities or boroughs may acquire lands, &c., with the consent of the Treasury.*] In every case in which the council of any city or borough in England, the corporate body of which has not power to purchase or acquire land and hereditaments, or to hold land in mortmain, deem it expedient to purchase or otherwise acquire, for public purposes, any hereditaments, such council shall represent the circumstances of the case to the commissioners of Her Majesty's Treasury, and it shall be lawful for such council, with the approbation of the said commissioners, to purchase or acquire any hereditaments in such manner and on such terms and conditions as may have been approved of by the said commissioners, and such hereditaments may be conveyed to and holden by the body corporate of such borough accordingly (a); and in any such case as aforesaid, and also in any other case where the said commissioners are satisfied, upon representation of the circumstances, that all or any part of the purchase money of any hereditaments proposed to be purchased for public purposes by the council of a borough shall be raised by mortgage or charge as hereinafter mentioned, the council may, with the approbation of the commissioners, charge and make liable, by way of mortgage or otherwise, the hereditaments so to be purchased, or any other hereditaments of the body corporate or the borough fund or borough rates of the borough, or all or any of the securities aforesaid, with the payment of any money necessary for effecting such purchase, and interest; and the provisions hereinbefore contained with reference to the approval of mortgages shall be applicable in the case as well of charge on the borough rates or borough fund as of mortgages under this provision: provided that notice of the intention of the council to make such application shall be given, and a copy of the memorial intended to be sent be open to inspection as by law required in the case of a like application in relation to a disposition of hereditaments.

IX. *Answer of the Treasury to applications of the council to be published, &c.*] Where any application by the council of any borough is made for the approbation of the said commissioners to any proposed disposition, purchase, or acquisition of any property, and the said commissioners either altogether refuse the application or grant their approbation conditionally, or otherwise qualify the same, notice of the correspondence between the said commissioners and the council shall forthwith and for one month be fixed on the outer door of the town hall, or in some public and conspicuous place within the borough, and a copy of such correspondence shall during the same period be kept in the town clerk's office, and be freely open to the like inspection as by law provided with respect to the copy of the memorial containing such application required to be kept in such office.

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(a) See 23 & 24 Vict. c. 106, s. 6.

X. *Corporations may submit schemes to commissioners of Treasury for payment of borough mortgage debt.*] Whereas in certain boroughs mortgage debts have been heretofore incurred, for the payment and discharge of which no adequate legal provision now exists: it shall be lawful for the corporation of any such borough to submit to the commissioners of Her Majesty's Treasury any scheme for the discharge of any such debts, by instalments, or by a sinking fund, or by both, extending over any term of years; and if the said commissioners approve of such scheme, the sums required for providing for the discharge of the debt to which such scheme relates, in the manner proposed therein, shall, by virtue of this Act, become charged upon all or any of the hereditaments of the body corporate, or the borough fund, or the borough rates, or any other rates which would have been applicable to or towards the discharge of such debts, or on all or any of the securities aforesaid, as the said commissioners may approve and direct; and the provisions hereinbefore contained applicable where provision is made for repayment of money borrowed on mortgage by a sinking fund and instalments, or both, except the limitation to a period of thirty years, shall be applicable to the provision for the discharge of a mortgage debt under this provision: provided that notice of the intention of the council to make application to the said commissioners for the approval of any such scheme shall be given, and a copy of the memorial intended to be sent shall be open to inspection, in like manner as in cases of application to the commissioners for their approval of a disposition of hereditaments.

XI. *As to payment of debts due under authority of Acts of parliament.*] And whereas in certain boroughs sundry debts have from time to time been incurred under the authority of Acts of parliament, with different periods assigned for the discharge of the same: be it enacted, that it shall be lawful for the corporations of such boroughs respectively, with the consent of the commissioners of Her Majesty's Treasury, and with the consent in writing of the persons or bodies corporate to whom such debts respectively may be owing, previously obtained, to consolidate all such sundry debts into one, and thereon to make provision for the discharge of such consolidated debt, by annual instalments or by a sinking fund, or by both, extending over a period not exceeding thirty years, and to make such annual instalments or payments a legal charge upon the borough fund or the borough rates, or any other rates which would have been applicable to or towards the discharge of such debts, or on all or any of the securities as aforesaid, as the said commissioners may approve and direct: provided that notice of the intention of the council to make application to the said commissioners for the purpose aforesaid shall be given, and a copy of the memorial intended to be sent shall be open to inspection, in like manner as in cases of application to the commissioners for their approval of a disposition of hereditaments.

XII. *Power of local boards in boroughs.*] Where in any borough subject to the provisions of the Act passed in the sessions holden in the fifth and sixth years of the reign of His late Majesty King William the Fourth, chapter seventy-six, and intituled *An Act to provide for the regulation of municipal corporations in England and Wales*, a surplus is standing to the credit of the borough fund arising from the rents and profits of the property of the corporation, and not from a borough rate, and such borough is a district within the meaning of the Public Health Act, 1848, (b) the

corporation, acting as the local board of health of such borough, may, with the consent of such corporation, apply such surplus in payment of any expenses that have been previously to the passing of this Act or may hereafter be incurred by them acting as the local board of health of such borough in the improvement of such borough or of any part thereof, by drainage, enlargement of streets, or otherwise, in pursuance of the Public Health Act (1848) (a), and the Local Government Act (1858) (b), or of one of such Acts.

XIII. *Not to affect powers under local Acts.*] Provided always, that nothing in this Act shall repeal, abridge, or affect any power or authority of any body corporate, or the council of any borough, under any local Act of parliament relating to such body corporate or borough.

XIV. *Act to be construed with 5 & 6 Will. 4, c. 76.*] This Act shall, as regards England, be construed with the Act of the sessions holden in the fifth and sixth years of King William the Fourth, chapter seventy-six, as one Act. \* \* \*

XV. *Short title.*] The Act may be cited as "The Municipal Corporation Mortgages, &c., Act, 1860."

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#### 24 & 25 VICT. CAP. LXXV.

An Act for the amending the Municipal Corporations Acts.

[6th August, 1861.]

WHEREAS it is expedient to amend in manner hereinafter mentioned the Act passed in the session holden in the fifth and sixth years of the reign of His late Majesty King William the Fourth, chapter seventy-six, intituled *An Act to provide for the regulation of municipal corporations in England and Wales*, and hereinafter referred to as the "Principal Act:" be it therefore enacted, &c.

1. *Short title.*] This Act may be cited for all purposes as "The Municipal Corporations Act Amendment Act, 1861."

2. *Construction of section 57 of 5 & 6 Will. 4, c. 76.*] Whereas by the fifty-seventh section of the principal Act it is provided that the mayor for the time being of every borough shall be a justice of the peace of and for such borough, and shall continue to be such justice of the peace during the next succeeding year after he has ceased to be mayor, unless disqualified as hereinbefore mentioned; and that such mayor shall, during the time of his mayoralty, have precedence in all places within the borough: it is hereby enacted, that the mayor of every borough shall, during the time of his mayoralty, have precedence over all justices of the peace acting in and for such borough, and be entitled to take the chair at all meetings of

justices held within the borough at which he may be present by virtue of his office of mayor, subject to these provisos; firstly, that the mayor of a borough shall not by virtue of this section have any precedence over the justices of the peace acting in and for the county, riding, or division of a county in which any such borough is situate except unless when acting in relation to the business of such borough, or over any stipendiary magistrate engaged in administering justice (b).

3. *Amendment of section 98 of 5 & 6 Will. 4, c. 76.*] Whereas by the ninety-eighth section of the principal Act it is provided, that every person assigned by Her Majesty's commission to act as justice in and for a borough shall reside within the borough for which he shall be so assigned, or within seven miles of the borough, or of some part thereof, during such time as he shall act as a justice of the peace in and for such borough; and by the ninth section of the principal Act it is provided, that every Burgess shall be an inhabitant householder within the borough, or within seven miles thereof: it is hereby enacted, that every such justice shall be deemed to reside within such borough if he occupies any house, shop, warehouse, or other premises within the same.

4. *Boroughs having a separate commission of the peace to be deemed towns corporate for the purposes of the Alehouse Licensing Act.*] Whereas by the ninety-eighth section of the principal Act it is provided, that Her Majesty's commission may be issued to certain persons to act as justices of the peace in and for each of the several boroughs therein mentioned: and whereas doubts have arisen whether boroughs having separate commissions of the peace but not having separate courts of quarter sessions are "towns corporate" within the meaning of the Act ninth of George the Fourth, session two, chapter sixty-one, intituled *An Act to regulate the granting of licenses to keepers of inns, alehouses, and victualling houses in England*, so as to give the justices of such boroughs control over the granting or withdrawing licenses, and it is desirable that such doubts should be removed: it is hereby declared, that in the construction of the last-mentioned Act the words "town corporate," and the words, "county or place," and the words "division or place," include every borough in England having a separate commission of the peace, although it may not have a separate court of quarter sessions; and that the words "high constable," where used in the same Act, include any constable of any such borough to whom the justices of the same borough may direct their precept or precepts under the same Act; and that all licenses hitherto granted, and all transfer of licenses hitherto made in pursuance of the same Act, or of the Act of the fifth and sixth Victoria, chapter forty-four, or any other Act, by the justices of any such borough, are hereby declared to be valid and effectual to all intents and purposes.

5. *Repeal of section 112 of 5 & 6 Will. 4, c. 76, and new provisions enacted in lieu thereof.*] Whereas by the one hundred and second section of the principal Act, it is enacted, that it shall not be lawful for the justices of any borough to appoint or continue as such clerk to the justices any alderman or councillor of such borough, or clerk of the peace for such borough, or partner of such clerk of the peace, or any clerk or person in the employ of such clerk of the peace; and that it shall not be lawful for

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(b) The second proviso relates to the universities of Cambridge and Oxford.

the said clerk to the justices, by himself or his partner, to be directly or indirectly interested or employed in the prosecution of any offender committed for trial by the justices of whom he shall be such clerk as aforesaid, or any of them, at any court of gaol delivery, or general or quarter sessions; and that any person being an alderman or councillor, or clerk of the peace of any borough, or the partner or clerk, or in the employ of such clerk of the peace, who shall act as clerk to the justices of such borough, or shall otherwise offend in the premises, shall for every such offence forfeit and pay the sum of one hundred pounds as therein mentioned: and whereas the said provisions have been found to be insufficient for preventing the mischiefs thereby intended to be prevented: it is hereby enacted, that the said provisions of the one hundred and second section of the principal Act shall be repealed; and from and after the passing of this Act it shall not be lawful for the justices of any borough to appoint or continue as their clerk any alderman or councillor of such borough, or the clerk of the peace of such borough or of the county in which such borough is situate, or the partner of any such clerk of the peace; and it shall not be lawful for the clerk to the justices of any borough, by himself or his partner, or otherwise, to be directly or indirectly employed or interested in the prosecution of any offender committed for trial by the justices of such borough, or any of them, at any court of gaol delivery or general or quarter sessions; and any person who shall in anywise offend in the premises shall for every such offence forfeit and pay the sum of one hundred pounds, one moiety thereof to the treasurer of such borough, to be paid over to the credit and account of the borough fund, and the other moiety thereof, with costs of suit, to any person who may sue for the same in any of Her Majesty's courts of record at Westminster: provided that nothing herein contained shall prevent the justices of any borough reappointing as their clerk any clerk of the peace or partner of such clerk of the peace of their borough, or of the county in which such borough is situate, who at the time of the passing of this Act shall be, or who shall not at the time of such reappointment have ceased to be, the clerk of such justices.

6. *Provisions of 22 & 23 Vict. c. 56 as to appointment of inspectors of weights and measures extended to boroughs having a separate commission of the peace.*] Whereas by the fourth section of an Act passed in the session holden in the twenty-second and twenty-third years of the reign of Her present Majesty, chapter fifty-six, intituled *An Act to amend an Act of the fifth and sixth years of King William the Fourth, chapter sixty-three, relating to weights and measures*, certain powers of appointing inspectors of weights and measures are conferred on the town councils of all municipal boroughs of England and Wales incorporated under the provisions of the principal Act to which a separate court of quarter sessions has been granted: and whereas it is expedient to extend such provisions to the town councils of all municipal boroughs in England and Wales having a separate commission of the peace, although they may not have a separate court of quarter sessions: it is hereby enacted, that all the provisions of the said fourth section shall extend to boroughs having a separate commission of the peace in the same manner as if such boroughs were therein included under the description of "boroughs to which a separate court of quarter sessions has been granted."

8. *(a) Construction of Act.*] This Act shall be construed as one with the said principal Act.

## 25 &amp; 26 VICT. CAP. LXI.

An Act for the better Management of Highways in England.

[29th July, 1862.]

2. *Definition of "county" and "borough."*] The word "county in this Act shall not include a "county of a city" or "a county of a town," \* \* \* the word "borough" shall mean a borough as defined by the Act of the session holden in the fifth and sixth years of King William the Fourth, chapter seventy-six (&c.), or any place to which the provisions or the said Act have been or shall hereafter have been (*sic*) extended.

45. *Enabling councils of certain boroughs to adopt parish roads and highways, and to apply rates for their repair.*] Whereas there are in certain boroughs in England and Wales roads and highways that are now and have heretofore been repaired by the inhabitants of the several parishes or townships within which such roads and highways are situated, and who also contribute and pay to the general rates levied for the repair of the public streets, roads, and highways maintained and kept in repair by the council of such boroughs, by reason whereof a great burthen is imposed upon the ratepayers of the said parishes and townships; and it being doubtful whether the council of such boroughs have the power to adopt such parish roads and highways, or to apply the rates collected in such boroughs in repairing the same: be it enacted, that it shall and may be lawful for the council of every such borough in England and Wales, upon the petition of the majority of the ratepayers of such parishes or townships present at a public meeting duly convened, to adopt all or any of such parish roads and highways as the council shall in its discretion consider advisable, and to apply the rates levied and collected by the said council for the repair of the public streets, roads, and highways within such borough in repairing and maintaining such parish roads and highways: provided always, that it shall be competent for such council, previous to adopting such parish roads and highways, to require the provisions contained in any local Act applying to the public streets, roads, and highways of such borough to be complied with.

## 26 VICT. CAP. XIII.

An Act for the Protection of certain Garden or Ornamental Grounds in Cities and Boroughs.

[4th May, 1863.]

WHEREAS it is expedient to make provision for the better protection and charge of enclosed garden or ornamental grounds which have been set apart for the use of the inhabitants of any public square, crescent, circus, street, or other public place surrounding or adjoining such gardens or grounds in any city or borough: be it enacted, &c.:

1. *Gardens in certain squares, &c., may be freed from neglect, encroachments, &c., and vested in the Metropolitan Board of Works (a) or other corporate authority; or vested in a committee of rated inhabitants.*] Where in any city or borough any enclosed garden or ornamental ground has been set apart otherwise than by the revocable permission of the owner thereof in any public square, crescent, circus, street, or other public place, for the use or enjoyment of the inhabitants thereof, and where the trustees, commissioners, or other body appointed for the care of the same have neglected to keep it in proper order, or where such garden or ground has not been vested in or placed under the management of any trustees, commissioners, or other body for the care of the same, and from the want of such care, or from any other cause, has been neglected \* \* \* the corporate authorities in any \* city or borough, [shall take charge of the same, putting up a notice or notices to that effect in such garden or ornamental ground, and if after due inquiry the person entitled to any estate of freehold in the same cannot be found, or if it shall be vested in any person by whom it is held, subject to any condition or reservation for keeping the same as and for a garden or pleasure ground, or that the same shall not be built upon, but not otherwise, shall cause any buildings or other encroachment made therein within the period of twenty years before the passing of this Act to be removed, and (if requested by a majority of two-thirds of the owners and of the occupiers of the houses surrounding the same) shall vest such garden or ornamental ground in a committee consisting of not more than nine nor fewer than three of the rated inhabitants of such houses to be chosen annually by such inhabitants, in order that the same may be kept as a garden or ornamental ground for the use of such inhabitants; and the vestry or board of any and every parish or district within which the same or any part thereof is situate shall from time to time cause to be raised the sums required by such committee for defraying the expenses of the maintenance and management of such enclosed garden or ornamental ground, or of such part thereof as is situate within their parish or district, by an addition to the general rate to be assessed on the occupiers of such houses; or if the said owners and occupiers shall not agree as aforesaid to undertake the charge of such garden or ornamental ground, the \* corporate authority aforesaid shall, within six months after the notice hereinbefore mentioned shall have been put up within the same, or within such further time as the said board or authority may think it expedient to allow for such agreement to be come to, vest the same in such vestries or boards, who shall thenceforth take charge of and maintain the same as an open place or street in such manner as shall appear to them most advantageous to the public, subject to the approval of the \* corporate authority, as the case may require; saving and always reserving to every person and persons, his and their heirs, executors, administrators, and assigns, all such estate, right, title, and interest as he, she, or they would or ought to have had and enjoyed of, in, to, from, or out of the gardens and grounds aforesaid in case this Act had not passed.

2. *Protection of open space from encroachment.*] And whereas it is expedient that the same should be carefully protected from undue encroachment, where any right to require that any garden or ornamental ground as aforesaid be kept and maintained as such, or that the same shall not be

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(a) The portions of the Act relating to the Metropolitan Board of Works and the city of London are omitted.



built upon, shall belong to any person in right of any house or other property, and he shall by notice in writing signed by him addressed to the \* \* \* corporate authorities in any \* city or borough, requesting the said \* corporate authority to protect the right before mentioned, the said \* corporate authority, after due inquiry may, if they shall think fit, accede to such request, and then and thereupon the right of person to require that such garden or ornamental ground to be maintained as such, or that the same shall not be built upon, shall thenceforth be vested in such \* corporate authority, who shall be fully empowered, for and in their own name, to exercise all the rights, powers, and privileges in relation thereto, and take such legal proceedings for asserting, defending, and protecting the same, as the said person might have exercised or taken.

3. *Expenses how to be defrayed.*] \* \* \* The expenses incurred by any corporate authority shall be deemed to be expenses necessarily incurred by them in carrying into execution within and for their city or borough the Act intituled *An Act to provide for the regulation of municipal corporations in England and Wales (b)*, and any other Act amending the same.

4. *Bye-laws for management of garden, &c.*] Where any such garden or ground is managed by any committee of the inhabitants of any square, crescent, circus, street, or place, such committee may make, and from time to time revoke and alter, bye-laws for the management of the same, and for the preservation of the trees, shrubs, plants, flowers, rails, fences, seats, summer-houses, and other things therein, which bye-laws shall be entered in a book kept for that purpose by the committee, signed by the chairman of the meeting at which the same shall be passed, and which book shall and may be produced and read, and taken as evidence of such bye-laws, in all courts whatever, and any inhabitant or servant, or other person admitted to such garden by any inhabitant, offending against the same, after they shall have been duly allowed, as hereinafter provided, upon proof thereof before a magistrate acting for the district in which such garden is situate, shall be liable for each offence to a penalty not exceeding five pounds: provided always, that such bye-laws shall not come into operation until the same shall have been allowed by some judge of one of the superior courts, or by the justice in quarter sessions; and it shall be incumbent on such judge or justices, on the request of such committee, to inquire into any bye-laws tendered to them for that purpose, and to allow or disallow the same as they think meet.

5. *Penalty for injuring garden.*] Any police constable who shall see any person throwing any rubbish into any such garden, or trespassing therein, or getting over the railings or fence, or stealing or damaging the flowers or plants, or committing any nuisance therein, may apprehend such person, under the authority hereby given to him; and any person convicted before any magistrate acting for the district shall be liable for each and every offence aforesaid to a penalty not exceeding forty shillings, or to imprisonment for any period not exceeding fourteen days; and in case it shall be necessary to state in any proceedings the ownership of the property of such garden, flowers, or plants, it shall be sufficient to describe the same as the property of the committee by the name of *A. B.* and others.

6. *Certain provisions of 18 & 19 Vict. c. 120, to be incorporated with this Act, and to apply to penalties, &c., imposed by this Act.—11 & 12 Vict. c. 43, also to apply.*] The provisions contained in the two hundred and twenty-fifth, two hundred and twenty-sixth, two hundred and twenty-seventh, and two hundred and twenty-eighth sections of the Act passed in the session of parliament held in the eighteenth and nineteenth years of the reign of Her most gracious Majesty the Queen, chapter one hundred and twenty, shall be incorporated in this Act, and shall apply to any penalty or forfeiture imposed by this Act, or any bye-law made in pursuance thereof, in and for every matter or thing done or omitted to be done within the metropolitan district; and the Act passed in the twelfth year of the reign of Her Majesty the Queen, chapter forty-three, shall apply to every penalty or forfeiture imposed by this Act, or any bye-law made in pursuance thereof, for any matter or thing done or omitted to be done within any other part of England and Wales.

7. *Act not to extend to property of the Crown or to property under the management of the commissioners of works, &c.*] Nothing in this Act shall extend to or include any garden, ornamental ground, or other land belonging to Her Majesty in right of her Crown or of her Duchy of Lancaster, or any garden, ornamental ground, or other land for the time being under the management of the commissioners for the time being of Her Majesty's works and public buildings, or of the commissioners for the time being acting under the Crown Estate Paving Act, 1851, or to any garden, ornamental or other ground, for which special provision is made for the due care and protection thereof by any public or private Act of parliament.

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#### 28 VICT. CAP. XXXV.

An Act to amend the Law relating to the Police Superannuation Funds in Counties and Boroughs. [2nd June, 1865.]

WHEREAS it is expedient to amend the law relating to police superannuation funds in counties and boroughs: be it enacted, &c.

1. *Short title.*] This Act may be cited for all purposes as "The Police Superannuation Act, 1865."

2. *Short titles of certain Police Acts.*—3 & 4 Vict. c. 88.—19 & 20 Vict. c. 69.—22 & 23 Vict. c. 32.—Throughout this Act the Acts hereinafter mentioned shall be distinguished by the following short titles; that is to say,—

The Act of the session of the third and fourth years of the reign of Her present Majesty, chapter eighty-eight, intituled *An Act to amend the Act for the establishment of county and district constables*, by the short title of "The Police Act, 1840."

The Act of the session of the nineteenth and twentieth years of the reign of Her present Majesty, chapter sixty-nine, intituled *An Act to render more effectual the police in counties and boroughs in England and Wales*, by the short title of "The Police Act," 1856."

The Act of the session of the twenty-second and twenty-third years of the reign of Her present Majesty, chapter thirty-two, intituled *An Act to amend the law concerning the police in counties and boroughs in England and Wales*, by the short title of "The Police Act, 1859."

3. *Amendment of sect. 11 of 3 & 4 Vict. c. 88; sect. 10 of 19 & 20 Vict. c. 69, and sects. 9 & 10 of 22 & 23 Vict. c. 32.*] Whereas by "The Police Act, 1840," and "The Police Act, 1856," the justices of the county in general or quarter sessions assembled, and by "The Police Act, 1859," the watch committee of a borough, with the approbation of the council, are authorized, subject to the conditions and in the events in the said Acts respectively mentioned, to grant out of the police superannuation funds to constables of the police forces of counties and boroughs who have served fifteen years superannuation or retiring allowances, and to constables who may not have served fifteen years, sums in gross as gratuities: and whereas it is expedient that in some cases annual allowances for a limited time should be granted in lieu of allowances for life or gratuities: be it enacted, that where the said Acts authorize a grant to be made to a constable of a superannuation or retiring allowance or a gratuity, the authority having power to grant such allowance or gratuity may, in lieu thereof, grant an annual allowance for a limited time, to be fixed by such authority, and to be determined on the death of the annuitant before the expiration of the time fixed: provided that where an allowance for a limited time is granted to a constable who has served for fifteen years or more, it shall be granted on the same scale as if it were a permanent superannuation or retiring allowance, and if at the expiration of the limited time the annuitant is incapable from infirmity of mind or body of discharging the duties of a constable, or has attained the age of sixty years, the allowance granted to him for a limited time only shall be continued during the remainder of his life: provided also, that where a person to whom an annual allowance for a limited time has been granted under this section is reappointed to the office of constable, the time during which he was in receipt of such allowance shall, for the purpose of any subsequent superannuation allowance, be reckoned as service in the force.

4. *Head constable included in provisions of 22 & 23 Vict. c. 32.*] Whereas doubts are entertained whether the provisions of "The Police Act, 1859," relating to the superannuation fund for constables belonging to a police force in boroughs, apply to a chief or head constable of the police force in such boroughs, by reason, amongst other things, that the said Act requires in certain cases the certificate or recommendation of the chief or head constable before an allowance can be made or a gratuity given out of the said fund to a constable or his widow; and whereas it is expedient to remove the said doubts: be it enacted, that the chief or head constable of the police force established in any borough in which the superannuation fund is subject to the regulations of the Police Act, 1859, shall, from and after the date of the passing of this Act, be deemed to be a constable of the said police force for all purposes relating to and within the meaning of this Act and all other Acts regulating such superannuation fund: provided, first, that in the case of the said chief or head constable, or his widow, a resolution of the watch committee to the effect of the certificate or recommendation required to be given by the chief or head constable under "The Police Act, 1859," shall be deemed to be equivalent to such certificate or recommendation; secondly, that the period of service during which any

chief or head constable, either as such or as an inferior member of the force, may have been subjected to deductions from his pay towards such borough police superannuation fund as aforesaid shall, in determining what allowance or gratuity is to be made to him, be reckoned and allowed to such chief or head constable; thirdly, that one half only of the period of service (if any) during which such chief or head constable, either as such or as an inferior member of the force, has been subjected to no such deduction as aforesaid from his pay towards such superannuation fund as aforesaid shall be reckoned and allowed to such chief or head constable in determining what allowance or gratuity is to be made to him; fourthly, that where such chief or head constable has been promoted from another police force, whether county or borough, to the borough force out of the fund of which he claims superannuation, in such a case, if he has served not less than seven years either as chief, head, or other constable in such other force, his service in such other force to the extent of one half thereof shall be deemed, for the purposes of superannuation, to be service in the latter force, and be reckoned accordingly, subject to the conditions on which service in the latter force may be reckoned under this section; and subject also to the qualification that if at the time when he was promoted from the other force he was under the rank of chief or head constable, no part of his service in such other force shall be reckoned unless his promotion took place on the recommendation of the chief or head constable of the force from which he was promoted.

5. *Nothing to prevent dismissals without retiring allowances.—Proviso.* [Nothing in this Act contained shall be construed to entitle absolutely any chief or head constable or other constable, or his widow, to any superannuation or retiring allowance or gratuity, or to prevent any such constable being dismissed without such allowance or gratuity: provided also, that nothing in this Act contained shall diminish or prejudice the allowances or rights of any chief or head constable or other constable given or reserved by the fifteenth section of "The Police Act, 1859" (a).]

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## 28 & 29 VICT. CAP. CXXVI.

An Act to consolidate and amend the law relating to Prisons. (b)  
[6th July, 1865.]

WHEREAS it is expedient to consolidate and amend the Law relating to prisons in England: be it enacted, &c.

1. *Short title.* [This Act may be cited for all purposes as "The Prison Act, 1865."]

2. *Commencement of Act.* [This Act shall come into operation on the first day of February one thousand eight hundred and sixty-six, which day is hereinafter referred to as the commencement of the Act.]

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(a) The remainder of this Act relates to local constables.

(b) Only such parts of this Act as relate to boroughs are printed.

3. *Application of Act.*] This Act shall not \* \* \* apply to the prisons for convicts under the superintendence of the directors of convict prisons, or to any military or naval prison.

4. *Definition of terms.*] In this Act, and in any Act applied or incorporated by this Act, the expressions hereinafter mentioned shall have the meanings hereinafter attached to them, unless there is something in the tenor of the Act inconsistent with such meanings; that is to say,—

“Municipal borough” shall mean any place for the time being subject to the Municipal Corporation Act passed in the session of the fifth and sixth years of the reign of His late Majesty King William the Fourth, chapter seventy-six, and any Acts amending the same, and “borough” shall include “municipal borough.”

“Prison” shall mean gaol, house of correction, bridewell, or penitentiary; it shall also include the airing grounds or other grounds or buildings occupied by prison officers for the use of the prison and contiguous thereto:

“Gaoler” shall mean governor, keeper, or other chief officer of a prison:

“Clerk of the peace” shall include any officer performing similar duties to those of a clerk of the peace:

“Treasurer” shall include any officer performing duties similar to those of treasurer:

“Quarter sessions” shall include “general sessions:”

“Criminal prisoner” shall mean any prisoner charged with or convicted of a crime.

5. *Description of “prison authorities.”*] The persons hereinafter named shall be prison authorities for the purposes of this Act; that is to say,—

\* \* \* \* \*

(4). As respects any prison belonging to a municipal borough, the council of the borough:

(5). As respects any prison belonging to any district, liberty, city, borough, or town having a separate prison jurisdiction, and not hereinbefore mentioned, the justices, council, or other persons having power at law to build, enlarge, or repair such prison, assembled at any gaol session or other formal meeting of their body.

6. *Definition of “justices in sessions assembled.”*] The expression “justices in sessions assembled” shall mean as follows; that is to say,—

\* \* \* \* \*

4. As respects any prison belonging to any municipal borough, the justices of the borough assembled at sessions to be held by them at the usual time of holding quarterly sessions of the peace, or at such other time as they may appoint:

5. As respects any prison belonging to any city, district, borough, or town having a separate prison jurisdiction, and not hereinbefore mentioned, the justices or other persons having power at law to make rules for the government of such prison.

\* \* \* \* \*

## PART I.

*The Maintenance and Government of Prisons.*

\* \* \* \* \*

8. *Maintenance of prisons by separate prison jurisdiction.*] There shall be provided, at the expense of every \* \* \* borough, town, or other place having a separate prison jurisdiction, adequate accommodation for its prisoners in a prison or prisons constructed and regulated in such manner as to comply with the requisitions of this Act in respect of prisons.

All expenses incurred by a prison authority in carrying into effect the provisions of this Act shall be defrayed out of the \* \* \* borough rate, or other rate leviable in the \* \* \* borough, town, or other place having a separate prison jurisdiction, and applicable to the maintenance of a prison, or out of any other property applicable to that purpose.

9. *Definition of separate prison jurisdiction.*] For the purposes of this Act every \* \* \* borough, town, or other place shall be deemed to have a separate prison jurisdiction which maintains a separate prison, or would be liable at law to maintain a separate prison if accommodation were not provided for its prisoners in the prison of some other jurisdiction.

\* \* \* \* \*

10. *Officers of Prison.* There shall be appointed to every prison by the justices in sessions assembled,

A gaoler; a chaplain, being a clergyman of the established church; a surgeon, duly registered as such, under the Act of the session of the twenty-first and twenty-second years of the reign of Her present Majesty, chapter ninety; and such subordinate officers as may be necessary.

And to every prison in which females are confined,

A matron and such subordinate female officers as may be necessary.

Provided, that in a prison where females only are imprisoned the matron shall be deemed to be the gaoler, and shall, so far as is practicable, perform all the duties and be subject to all the obligations of a gaoler in relation to such prison.

11. *Appointment of chaplain to two prisons.*] The same person may officiate as chaplain of any two prisons situate within a convenient distance from each other, if such prisons together are calculated to receive not more than one hundred prisoners; but the chaplain of more than one prison, and the chaplain of any prison in which the average number of prisoners confined at any one time during the three years next before his appointment has not been less than one hundred, shall not, whilst holding his chaplaincy, hold any benefice with cure of souls or any curacy.

12. *Assistant chaplains and deputy gaoler.*] The justices in sessions assembled may appoint an assistant chaplain, being a clergyman of the established church, and a deputy gaoler, or either of such officers, to any prison which they deem sufficiently large to require the appointment of such officers or either of them.

13. *Notice to be sent to bishop as to chaplains and assistant chaplains.*] Notice of the nomination of a chaplain or assistant chaplain to a prison

shall, within one month after it has taken place, be transmitted to the bishop of the diocese in which the prison is situate, and no chaplain or assistant chaplain shall officiate in any prison until he has obtained a license for that purpose from the bishop of the diocese wherein the prison is situate, nor for any longer time than while such license continues in force.

14. *Tenure of office and salaries of prison officers.*] Every officer of a prison appointed under this Act shall hold his office during the pleasure of the justices in sessions assembled, and shall receive such salary as they may direct, subject to this proviso, that in the case of a municipal borough the amount of the salary of every prison officer appointed under this Act shall be approved by the council.

15. *Superannuation of officers.*] If any officer of a prison has been an officer of such prison for not less than twenty years, and is not less than sixty years of age, or becomes incapable, from confirmed sickness, age, or infirmity, or injury received in actual execution of his duty, of executing his office in person, and such sickness, age, infirmity, or injury is certified by a medical certificate, and there shall be a report of the visiting justices testifying to his good conduct during his period of service, and recommending a grant to be made to him (such report to be made at some sessions of the justices holden not less than two months before the sessions at which the grant is made), the justices in sessions assembled may grant to such officer, having regard to his length of service, an annuity, by way of superannuation allowance, not exceeding two-thirds of his salary and emoluments, or a gratuity not exceeding the amount of his salary and emoluments for one year; any annuity or gratuity so fixed to be payable out of the rates lawfully applicable to the payment of the salaries of such officers. Where the power to levy the last-mentioned rates is vested in a different body from the justices, the consent of such last-mentioned body shall be obtained to the amount of superannuation allowed.

16. *Removal of prison officers from apartments.*] Whenever any officer of a prison is suspended, removed from, or resigns his office, or departs this life, the officer so suspended, removed, or resigning, and his family, and the family of every such deceased officer, shall quit the possession of the house or apartments in which he or they have previously resided by virtue of such office when required so to do by notice under the hand (*sic*) or hands of two or more visiting justice (*sic*) or justices of the peace; and if he or they refuse or neglect to give such possession for forty-eight hours after such notice as aforesaid has been given to him or them, any two justices, upon proof made to them of such removal, resignation, or death, and of the service of such notice, and of such neglect or refusal to comply therewith, may, by warrant under their hands and seals, direct any constable, within a period therein named, to enter by force, if necessary, into such premises, and deliver possession thereof to the prison authority, or to any person appointed by the visiting justices.

17. *Requisitions of Act as to separation of prisoners.*] The requisitions of this Act with respect to the separation of prisoners are as follows:—

1. In every prison separate cells shall be provided equal in number to the average of the greatest number of prisoners, not being convicts under sentence of penal servitude, who have been confined in such prison at any time during each of the preceding five years.

2. In every prison punishment cells shall be provided or appropriated for the confinement of prisoners for prison offences :
3. In a prison containing female prisoners as well as males, the women shall be imprisoned in separate buildings or separate parts of the same buildings, in such manner as to prevent their seeing, conversing, or holding any intercourse with the men :
4. In a prison where debtors are confined, means shall be provided for separating them altogether from the criminal prisoners :
5. In a prison where criminal prisoners are confined, such prisoners shall be prevented from holding any communication with each other, either by every prisoner being kept in a separate cell by day and by night, except when he is at chapel or taking exercise, or by every prisoner being confined by night to his cell, and being subjected to such superintendence during the day as will, consistently with the provisions of this Act, prevent his communicating with any other prisoners.

18. *Cells to be certified for confinement of prisoners.*] No cell shall be used for the separate confinement of a prisoner unless it is certified by one of Her Majesty's inspectors of prisons to be of such a size, and to be lighted, warmed, ventilated, and fitted up in such a manner, as may be requisite for health, and furnished with the means of enabling the prisoner to communicate at any time with an officer of the prison ; but a distinction may be made in respect of the use of cells for the separate confinement of prisoners during long and short periods of imprisonment, and in respect of the use of cells in which the prisoner is intended to be employed during the whole day, or for a long or short part thereof ; and the certificates of the inspector may be varied accordingly, so as to express the period of imprisonment for which each cell may be considered fit, and the number of hours in the day during which the prisoners may be employed therein.

No punishment cell shall be used unless it is certified by such inspector that it is furnished with the means of enabling the prisoner to communicate at any time with an officer of the prison, and that it can be used as a punishment cell without detriment to the prisoner's health, and the time for which it may be so used shall be stated in the certificate.

Every certified cell shall be distinguished by a number or mark placed in a conspicuous position, and shall be referred to by its number or mark in the certificate of the inspector, and if the number or mark of any certified cell is changed without the consent of the inspector, such cell shall be deemed to be an uncertified cell until a fresh certificate has been given.

Any certificate given by an inspector in respect of a cell may be withdrawn on such alteration taking place in such cell as to render the certificate, in his opinion, inapplicable thereto, and upon a certificate in respect of a cell being withdrawn that cell shall cease to be a certified cell for the purposes of this Act.

If any prison authority feel aggrieved by the refusal of the inspector to certify a cell for any of the purposes of this Act, it (*sic*) may appeal to one of Her Majesty's principal secretaries of state, and his decision shall be final.

19. *Requisitions of Act as to hard labour.*] Hard labour for the purposes of this Act shall be of two classes, consisting, 1st, of work at the tread-wheel, shot drill, crank, capstan, stone-breaking, or such other like description of hard bodily labour as may be appointed by the justices in sessions assembled, with the approval of the secretary of state, which work



is hereinafter referred to as hard labour of the first class; 2ndly, of such other description of bodily labour as may be appointed by the justices in sessions assembled, with the approval of the secretary of state, which work is hereinafter referred to as hard labour of the second class; and in every prison where prisoners sentenced to hard labour are confined, adequate means (having regard to the average number of such prisoners confined in that prison during the preceding five years) shall be provided for enforcing hard labour in accordance with the regulations of this Act; and no prison shall be deemed to be in conformity with the requisitions of this Act with respect to the enforcement of hard labour unless such means as aforesaid have been provided therein, and prisoners sentenced to hard labour have been employed thereat in manner provided by this Act: provided, that employment in the necessary services or the prison may, in the case of a limited number of prisoners, to be selected by the visiting justices, as a reward for industry and good behaviour, be deemed to be hard labour of the second class.

20. *Regulations as to government of prisons.*] The regulations contained in the first schedule hereto with respect to the government of prisons shall be binding on all persons in the same manner as if they were enacted in the body of this Act.

21. *Rules in addition to regulations in schedule.*] The justices in sessions assembled shall make rules for the supply to all prisoners confined in prisons within their jurisdiction of a sufficient quantity of plain and wholesome food, regard being had so far as relates to convicted criminal prisoners to the nature of the labour required from or performed by such prisoners, so that the allowance of food may be duly apportioned thereto, and shall frame dietary tables for this purpose, and the said justices may make rules in respect of any other matters relating to the government of prisons within their jurisdiction, in addition to the regulations in the said first schedule, and may from time to time repeal or alter any rules made or dietary tables framed in pursuance of this section; but no rule or dietary table, or repeal or alteration of a rule or dietary table, shall be valid under this section until one of Her Majesty's principal secretaries of state has certified his approval in writing under his hand; and when such approval has been certified, such rule or dietary table, or repeal or alteration of a rule or dietary table, shall be binding on all persons in the same manner as if it were enacted by this Act. If the justices in sessions assembled make default in making rules and dietary tables that may be approved by the said secretary of state in respect of the supply of food to prisoners in any prison within their jurisdiction, there shall be in force in such prison such rules or dietary tables with respect to such supply as may from time to time be determined by the said secretary of state in writing under his hand.

22. *Inspector of prisons to leave a minute of observations.*] Upon visiting or inspecting a prison to which this Act applies, the inspector shall, by letter addressed to the visiting justices, call their attention to any irregularity he may have observed therein, or any complaint he may have to make against the buildings, the officers, or the discipline of the prison, and the visiting justices shall enter a copy of such letter in their minute book.

23. *Power to build prisons.*] Subject to the conditions hereinafter mentioned, any prison authority may alter, enlarge, or rebuild any of its (*sic*)

prisons, or may, if necessary, build other prisons in lieu of or in addition to any subsisting prisons, and may borrow money for the purpose of such alteration, enlargement, new building, or building.

24. *Conditions as to building prisons.*] The necessity for any alteration or enlargement or for rebuilding of an existing prison, or for the building of a new prison, shall be proved, in the case of a municipal borough, by the certificate of the recorder, or chairman of quarter sessions where there is no recorder \* \* \* and the consideration of such certificate or presentment shall not be entertained by the prison authority unless not less than three weeks' previous notice has been given in some one or more public newspaper or newspapers circulating within the district of the prison authority of their (*sic*) intention to take the same into consideration at a time and place to be mentioned in such notice, and in every case the sanction of one of Her Majesty's secretaries of state must be obtained to any such alteration, enlargement, rebuilding, or building.

25. *Mode of obtaining sanction of secretary of state to building of prisons.*] In order to obtain the sanction of the secretary of state to the alteration, enlargement, or rebuilding of any prison, the prison authority shall forward to him a plan of the proposed alterations, enlargement or new building, drawn on such scale and accompanied with such particulars as the said secretary may determine, and shall add thereto an estimate of the expense proposed to be incurred by the prison authority and the amount of money proposed to be borrowed; and wherever a new prison is built, or an old prison is altered, enlarged, or rebuilt, a chapel or suitable room shall be provided easy of access to the prisoners, and shall be strictly set apart for religious worship, or for the religious and moral instruction of the prisoners, and shall not be employed for any other purpose.

26. *Approval of secretary of state.*] The said secretary of state may approve of the plans submitted to him with or without modification, or may disapprove of the same, and his approval or disapproval shall be certified in writing under his hand.

27. *Charge of borrowed monies.*] Any monies borrowed by a prison authority may be charged by that authority on any \* \* \* borough rate, or other rate applicable to the maintenance of a prison and leviable by that authority, or on any other property belonging to that authority and applicable to the same purpose as the said rates, and shall be repaid, together with the interest due thereon, out of such rates or other property.

28. *Certain clauses of 10 & 11 Vict. c. 16, as to borrowing money incorporated.*] The clauses of "The Commissioners Clauses Act, 1847" (with the exception of the eighty-fourth clause) (a) with respect to mortgages to be created by the commissioners, shall form part of and be incorporated with this Act, and any mortgagee or assignee may enforce payment of his principal and interest by appointment of a receiver.

In the construction of the said clauses "the commissioners" shall mean "the prison authority."

Where a prison authority borrows any money for the alteration, enlargement, or rebuilding of any prison, or the building of any new prison, they

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(a) The Editor has put these words in a parenthesis to make the meaning clear; there is no comma in the Queen's printer's copy, after the words "eighty-fourth clause."

(sic) shall charge the rates or property out of which the monies borrowed are payable not only with the interest of the monies so borrowed, but also with the payment of such further sum as will ensure the repayment of the whole sum borrowed within thirty years, or if the loan has been made by the public works loan commissioners as defined by the "Public Works Loan Act, 1853" (b), within twenty years of the time of borrowing the same.

29. *Public works loan commissioners to lend money for building prisons.*] The said public works loan commissioners as defined by the Public Works Loan Act, 1853 (b), may advance to any prison authority upon the security of any rate applicable to or chargeable with the maintenance of a prison without any further security, for the purpose of altering, enlarging, or rebuilding any subsisting prison or building any new prison in pursuance of this Act, such sums of money as may be recommended by one of Her Majesty's principal secretaries of state.

30. *Appointment of surveyor general of prisons.*

31. *Contracts by prison authorities for maintenance of prisoners.*] Any prison authority may contract with any other prison authority having a prison in conformity with the requisitions of this Act, that the latter authority is to receive into and maintain in its prison or one of its prisons all prisoners maintainable at the expense of the former authority, or any particular class or classes of such prisoners: provided—

That no such contract shall be valid unless the prison of the latter authority is approved by one of Her Majesty's principal secretaries of state as being a fit prison to receive the prisoners contracted to be received there.

32. *Expenses of contracts between prison authorities.*] A contract entered into between prison authorities for the reception into and the maintenance in the prison of the one authority of the prisoners maintainable by the other authority may include the costs of conveying the prisoners to prison, and all other costs incurred in respect of such prisoners.

All monies payable under the contract shall be raised in the same manner in which monies for defraying the expenses of the prison for which a substitute is provided under the contract would be raiseable; and where such expenses are not by law wholly defrayable out of one fund, and a difference arises between the several persons interested in the several funds

(b) 16 & 17 Vict. c. 40. This statute which is intituled "An Act for altering the mode of repayment of advances by the public works loan commissioners under the Public Health Act, 1848, and other Acts" contains no direct definition of "the public works loan commissioners." In sect. 1, however, it is enacted that monies by the Public Health Act, 1848 (11 & 12 Vict. c. 63), authorized to be borrowed, &c., "may be borrowed from the commissioners acting in execution of the 57 Geo. 3, c. 34;" and then proceeds, "and on any such loan by the said commissioners called 'the public works loan commissioners,' the repayment of the monies borrowed," &c., providing for such repayment. The 57 Geo. 3, c. 34, is intituled "An Act to authorize the issue of exchequer bills, and the advance of money out of the consolidated fund, to a limited amount for the carrying on of public works and fisheries in the United Kingdom and employment of the poor in Great Britain, in manner therein mentioned," and the commissioners acting in execution of that Act were 21 gentlemen specially named in sect. 6. In case, however, any of them should die, &c., the major part of the remaining commissioners are empowered to fill up the vacancies, (sect. 57). These commissioners are popularly called "The Public Works Loan Commissioners" and the meaning of the words, in the Public Works Loan Act, 1853, must be the commissioners commonly called "The Public Works Loan Commissioners," but this is anything but a definition of who those commissioners are.

applicable to defraying such expenses as to what proportion ought to be applied to paying the expenses arising under the contract, such difference shall be settled by arbitration in manner hereinafter mentioned.

33. *Appropriation of prisons for purposes of classification.*] Where two or more prisons are within the jurisdiction of the same prison authority, that authority may carry into effect the requisitions of this Act with respect to the separation of prisoners or the enforcement of hard labour by appropriating particular prisons to particular classes of prisoners.

34. *Public notice of prisons being appropriated to certain prisoners.*] Where a change has been made as to the prison to which prisoners committed within the jurisdiction of any prison authority may be sent by reason of such authority having appropriated any of its prisons to a particular class of prisoners, or having contracted with another prison authority for the reception of its prisoners, or from any other cause, notice of such change shall be published once at the least in each of two successive weeks in some newspaper or newspapers usually circulated within the jurisdiction of the said prison authority, and a copy thereof shall be served upon the gaoler of every prison within such jurisdiction.

35. *Government allowance withheld from inadequate prisons.*] Whenever it appears to one of Her Majesty's principal secretaries of state that default has been made in any prison in complying with the requisitions of this Act in respect of the separation of prisoners or of the enforcement of hard labour, or of providing a chapel or suitable room for religious worship it shall be lawful for the said secretary of state to certify such non-compliance in writing under his hand to the commissioners of Her Majesty's Treasury, and upon such certificate being given no contribution shall thenceforth be paid out of monies provided by parliament towards the expenses of maintaining any prisoners in that prison until the said secretary of state has revoked his certificate, upon being satisfied that the defaulting prison has been brought into conformity with the requisitions of this Act, and then only from the date of such revocation :  
Provided,—

- 1st. That this section shall not affect the payment of any contribution payable on or before the thirty-first day of December one thousand eight hundred and sixty-six :
- 2d. That before the certificate of the said secretary of state is given under this section with respect to any prison, a copy of the report of the inspector of prisons relating to that prison, and a statement of the grounds on which the said secretary proposes to give his certificate, shall be sent to the prison authority ; and it shall be lawful for such authority upon receiving a copy of the said report and statement, to address any explanations or observations relating thereto to the said secretary of state :
- 3d. Whenever the certificate of the secretary of state is given under this section in respect of a prison, a copy of the said statement of grounds, accompanied with any such explanations or observations as aforesaid, shall be laid before parliament.

36. *Power of secretary of state to close inadequate prisons.*] If at any time it appear to one of Her Majesty's principal secretaries of state that a prison authority has, in respect of any prison within its jurisdiction, made

default for four successive years in complying with the requisitions of this Act with respect to the separation of prisoners, or with respect to the enforcement of hard labour, or with respect to providing a chapel or suitable room for religious worship, the said secretary of state may, by notice under his hand, addressed to the authority of that prison, and forwarded by post in a prepaid letter to the gaoler of the prison, or otherwise delivered to him, require that authority, within a time specified in such notice to bring such prison into conformity with the requisitions of this Act with respect to such matters as aforesaid, or to exercise the powers given to such authority by this Act of contracting for the removal of the whole or a number of its prisoners proportioned to the inadequacy of its prison in respect of such separation or means of providing such hard labour to some other prison where means exist for carrying into effect the requisitions of this Act with respect to the separation of prisoners or means of enforcing hard labour; and if any prison authority to whom such notice is given fail within six months after the receipt thereof, to comply with the requirements thereby made, the said secretary of state may order the said inadequate prison to be closed, and direct the removal of the prisoners therein and the committal of future prisoners to some other prison, the authority of which may be willing to receive them; and upon such order being made it shall be the duty of the gaoler of the said inadequate prison, without further warrant, to remove all the prisoners therein to the substituted prison named in the order of the secretary of state, and such substituted prison shall thenceforth, and so long as such order is in force, for all purposes relating to the committal, detention, trial, and punishment of the prisoners so removed, and of the prisoners committed thereto in pursuance of this section, be deemed to be the prison of the defaulting authority, and that authority shall pay, out of any rates or monies applicable to the support of the inadequate prison, all expenses incurred in and about the closing of that prison, and the removal of the prisoners therein to the substituted prison; and all expenses incurred by the authority of the substituted prison in respect of the prisoners committed to that prison in pursuance of this section shall be defrayed by the authority of the inadequate prison in the same manner in all respects as if that authority had contracted in pursuance of this Act with the authority of the substituted prison for the reception in the last-mentioned prison of prisoners belonging to the authority of the inadequate prison.

Notice of any order made by the said secretary of state in pursuance of this section shall be published in the *London Gazette*, and once at least in two successive weeks in one of the newspapers usually circulating in the \* \* \* borough, or place in which the prison to which the order relates is situate, and a copy of the gazette or newspaper containing such order shall be conclusive evidence of its contents.

37. *Assisting prisoners to escape.*] Every person who aids any prisoner in escaping or attempting to escape from any prison, or who, with intent to facilitate the escape of any prisoner, conveys or causes to be conveyed into any prison any mask, dress, or other disguise, or any letter, or any other article or thing, shall be guilty of felony, and on conviction be sentenced to imprisonment with hard labour for a term not exceeding two years.

38. *Punishment for carrying spirituous liquors or tobacco into prison.*] Every person who, contrary to the regulations of the prison, brings or attempts by any means whatever to introduce into any prison any spirituous

or fermented liquor or tobacco, and every officer of a prison who suffers any spirituous or fermented liquor or tobacco to be sold or used therein, contrary to the prison regulations, on conviction shall be sentenced to imprisonment for a term not exceeding six months, or to a penalty not exceeding 20*l.*, or both in the discretion of the court, and every officer of a prison convicted under this section shall, in addition to any other punishment, forfeit his office and all arrears of salary due to him.

39. *Punishment for carrying letters into and out of prisons.*] Every person who, contrary to the regulations of a prison, conveys or attempts to convey any letter or other document, or any article whatever not allowed by such regulations, into or out of any prison, shall on conviction incur a penalty not exceeding 10*l.*, and if an officer of the prison shall forfeit his office and all arrears of salary due to him, but this section shall not apply in cases where the offender is liable to a more severe punishment under any other provision of this Act.

40. *Notice of penalties to be placed outside of prison.*] The visiting justices shall cause to be affixed in a conspicuous place outside the prison a notice setting forth the penalties that will be incurred by persons committing any offence in contravention of the three preceding sections (a).

41. *When term of imprisonment expires on Sunday, prisoner to be discharged on preceding day.*] Any prisoner confined in a prison whose term of imprisonment would, according to his sentence, expire on any Lord's Day, shall be entitled to his discharge on the Saturday next preceding such Lord's Day; and every gaoler of every prison having the custody of any such prisoner as aforesaid is hereby required and authorized to discharge such prisoner on the Saturday next preceding any such Lord's Day.

42. *Allowance to discharged prisoner.*] Where any prisoner is discharged from prison, the visiting justices may order a sum of money not exceeding two pounds to be paid out of any monies under their control, and applicable to the payment of the expenses of the prisoner, by the gaoler to the prisoner himself, or to the treasurer of a certified Prisoner's Aid Society, on his receiving from such society an undertaking in writing, signed by the secretary thereof, to apply the same for the benefit of the prisoner, or, if that becomes impossible, to appropriate the whole or any unapplied part thereof for the benefit of such other prisoner or prisoners discharged from the said prison as the visiting justices may direct.

43. *Discharged prisoners provided with means of returning to place of settlement.*] When a prisoner is discharged from prison the visiting justices of the prison may provide such prisoner out of any monies under their control, and applicable to the payment of the expenses of the prison, with the means of returning to his home or place of settlement, by causing his fare to be paid by railway, or in any other convenient manner.

44. *Certain provisions of 8 & 9 Vict. c. 18, incorporated.*] Any prison authority may purchase and hold such lands or easements relating to lands as they may require for the purposes of this Act; and to facili-

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(a) This should be "the three last-preceding sections;" there are thirty-nine "preceding sections."

tate such purposes the Lands Clauses Consolidation Act, 1845, and the Act amending the same, passed in the session of the twenty-third and twenty-fourth years of the reign of Her present Majesty, chapter one hundred and six (b), shall be incorporated with this Act, with the exceptions and subject to the conditions hereinafter contained; that is to say,—

1. There shall not be incorporated with this Act the sections and provisions of the Lands Clauses Consolidation Act, 1845, hereinafter mentioned; that is to say, section sixteen, whereby it is provided that the capital is to be subscribed before the compulsory powers are to be put in force; section seventeen, whereby it is provided that the certificate of the justices shall be evidence that the capital has been subscribed; the provisions relating to the entry upon lands by the promoters of the undertaking contained in sections eighty-four to ninety-one, both inclusive; section one hundred and twenty-three, whereby a limit of time for the compulsory purchase of land is imposed; or the provisions relating to access to the special Act:
2. In the construction of this Act and the said incorporated Acts this Act shall be deemed to be the special Act, and the prison authority shall be deemed to be the promoters of the undertaking, and the word "lands" shall include any easement in or out of lands:
3. The prison authority shall not, except in respect of lands contiguous to a prison, and required for the purpose of enlarging a prison or rendering it more commodious or safe, put in force the provisions of the said incorporated Acts with respect to the purchase of land otherwise than by agreement.

45. *Confirmation of title to lands purchased for purpose of prison.*] When any lands have been purchased for the purposes of a prison in pursuance of this Act, such lands shall, at the expiration of five years from the date of a conveyance having been made to any person or body corporate on trust for such purposes, absolutely vest in that person or body corporate for all the estate or interest purported to be conveyed, to be held on trust for the aforesaid purposes; and if before the expiration of the said term of five years any proceedings are taken on which judgment is obtained for the recovery of the possession of the said lands, then within two calendar months after judgment has been obtained there shall be paid to the person obtaining such judgment, instead of the delivery of possession of the lands, all costs incurred in obtaining such judgment and compensation for the full value of his estate or interest in such lands, the amount of such compensation to be ascertained in manner provided by the said Lands Clauses Consolidation Act, 1845 (c), in case of disputed compensation as to land, and to be calculated on the basis of the value of the land at the time of the purchase thereof.

46. *Sale of unnecessary prisons.*] Any prison authority may sell any prison or land belonging to or held on trust for them as such prison authority that appears to them to be unnecessary by reason of their having provided for the accommodation of their prisoners, and the monies arising

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(b) The reader is referred to the statutes themselves. To insert them in this work would render it much too bulky.

(c) 8 & 9 Vict. c. 18.

from such sale shall be applied in discharging any expenses that may have been or may hereafter be incurred by such authority in building, altering, enlarging, or rebuilding any prison within their jurisdiction, or otherwise in aid of the rate raiseable for the maintenance of their prison.

47. *Conditions of sale.*] No sale or purchase shall be made in pursuance of this Act by a prison authority unless, not less than three weeks previous, notice has been given in some one or more public newspaper or newspapers circulating within the district of the prison authority, of their intention to take into consideration the propriety of making such a sale or purchase at a time and place to be mentioned in such notice.

Any sale in pursuance of this Act may be made by private contract or public auction, and subject to any special conditions as to title or other matters the vendors may think expedient. No purchaser shall be required to examine into the propriety of the sale of any prison or land in pursuance of this Act, or into the appropriation of any monies paid by him to the vendors; and any such sale shall, in the absence of actual fraud on his part, be valid so far as he is concerned, notwithstanding any omission to give such notice as aforesaid, or any other impropriety in the sale or misapplication of the purchase money.

48. *Inquests on prisoners.*] It shall be the duty of the coroner having jurisdiction in the place to which the prison belongs to hold an inquest on the body of every prisoner who may die within the prison. Where it is practicable, one clear day shall intervene between the day of the death and the day of the holding the inquest; and in no case shall any officer of the prison, or any prisoner confined in the prison, be a juror on such inquest.

49. *General issue may be pleaded to action.*] If any suit or action is prosecuted against any person for anything done in pursuance of this Act, such person may plead the general issue, and give this Act and the special matter in evidence, at any trial to be had thereupon, and that the same was done by authority of this Act; and if a verdict passes for the defendant, or the plaintiff becomes nonsuited, or discontinues his action after issue joined, or if, upon demurrer or otherwise, judgment be given against the plaintiff, the defendant shall recover double costs, and have the like remedy for the same as any defendant hath by law in other cases; and though a verdict be given for the plaintiff in any such action such plaintiff shall not have costs against the defendant, unless the judge before whom the trial takes place certifies his approbation of the action and of the verdict obtained thereupon.

50. *Venue, where laid.*] All actions, suits, and prosecutions commenced against any person for anything done in pursuance of this Act shall be laid and tried in the county or place where the act complained of was committed, and shall be commenced within six calendar months after the committal thereof, and not otherwise.

51. *Provision as to arbitration.*] Any difference authorized or directed by this Act to be settled by arbitration shall be referred to the arbitration of a barrister-at-law to be appointed in writing, on the application of any party to the difference, by any judge of assize of the last preceding or of



the next succeeding circuit; and all the provisions of the Common Law Procedure Act, 1854 (a), relating to compulsory references, shall be deemed to extend to any such arbitration, with this addition, that it shall be obligatory on the arbitrator, at the request of any party to the difference, to state a special case for the opinion of a superior court.

52. *Recovery of penalties.*] Offences under this Act, with the exception of felonies, and of offences for the mode of trial of which express provision is made by this Act, shall be prosecuted summarily before two justices acting for the division or place where the matter requiring the cognizance of such justices arises, and in manner directed by the Act of the session holden in the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three and any Act amending the same.

53. *Appointment of visiting justices.*] The justices within every prison jurisdiction, in sessions assembled, shall, at their first sessions in each year, nominate two or more justices, with their consent, to be visitors of each prison within their jurisdiction, with power, if they think fit, to declare such nomination to be for the whole year, or to renew the same or make a fresh nomination in each succeeding quarter of the year; and one or more of the visiting justices so appointed shall from time to time visit and inspect each prison, and shall examine into the state of the buildings, so as to form a judgment as to the repairs, additions, or alterations which may appear necessary, strict regard being had to the requisitions of this Act with respect to the separation of prisoners, and enforcement of hard labour in prisons, and shall further examine into the conduct of the respective officers, and the treatment and conduct of the prisoners, the means of setting them to work, the amount of their earnings, and the expenses attending the prison, and shall inquire into all abuses within the prison, and shall take cognizance of matters of pressing necessity, and within the powers of their commission as justices, and regulate the same, and shall once at least in each quarter of a year make a report to the justices in sessions assembled.

54. *Power to make rules as to visiting justices.*] The justices in sessions assembled may make rules with respect to the duties of visiting justices, and from time to time repeal or alter any rule so made, and make other rules in addition thereto or in substitution therefor, but no rules shall be valid which are inconsistent with any provision of this Act.

55. *Visits to prison by any justice.*] Any justice of the peace having jurisdiction in the place to which a prison belongs may, whenever he thinks fit, enter into and examine the condition of such prison, and of the prisoners therein, and he may enter any observations he may think fit to make in reference to the condition of the prison, or abuses therein, in the visitors book to be kept by the gaoler; and it shall be the duty of the gaoler to draw the attention of the visiting justices, at their next visit to the prison, to any entries made in the said book; but he shall not be entitled in pursuance of this section to visit any prisoner under sentence of death, or to communicate with any prisoner, except in reference to the treatment in prison of such prisoner, or to some complaint that such prisoner may make as to such treatment.

## PART II.

*Law of Prisons.*

56. *Abolition of distinction between gaol and house of correction.*] Subject to the provisions of this Act with respect to the appropriation of prisons to particular classes of prisoners, every prison to which this Act applies shall be deemed to be a gaol and house of correction, but no class of prisoners that have not previously to the commencement of this Act been confined in any prison shall be confined there until one of Her Majesty's principal secretaries of state has certified that such prison is a fit place of confinement for that class of prisoners.

57. *Jurisdiction over prison.*] Every prison, wheresoever situate, shall for all purposes be deemed to be within the limits of the place for which it is used as a prison.

58. *Custody of prisoners.*] Every prisoner confined in a prison shall be deemed to be in the legal custody of the gaoler, provided that nothing in this Act contained shall affect the jurisdiction or responsibility of the sheriff in respect of prisoners under sentence of death, or his jurisdiction or control over the prison where such prisoners are confined, and the officers thereof, so far as may be necessary for the purpose of carrying into effect the sentence of death, or for any purpose relating thereto; and in any prison in which sentence of death is required to be carried into effect on any prisoner, whether such prison is or not the common gaol of the county, the sheriff shall, for the purposes of carrying that sentence into execution, be deemed to have the same jurisdiction with respect to such prison as he has by law with respect to the common gaol of a county, or would have had if this Act had not passed.

59. *Security to sheriff.*] The gaoler of any prison in which debtors are confined shall give security to the sheriff for their safe custody to such amount as may be determined by agreement, or, in default of agreement, may be settled by the justices in sessions assembled; and any such security may be given to the sheriff and his successors in office, and shall be deemed to enure to the benefit of each succeeding sheriff in the same manner as if he were individually named therein.

60. *Responsibility of sheriff.*] The sheriff shall not be liable for the escape from imprisonment of any prisoner other than a debtor.

61. *Description of prison in writ.*] Any writ, warrant, or other legal instrument addressed to the gaoler of a particular prison, describing the prison by its situation or other definite description, shall be valid, by whatever title such prison is usually known, or whatever be the description of the prison, whether gaol, house of correction, bridewell, penitentiary, or otherwise.

62. *Gaoler of prison to deliver calendar.*] The gaoler of every prison shall deliver or cause to be delivered to the judges of assize, and to the justices in quarter sessions, a calendar of all prisoners in custody for trial at such assizes or gaol sessions, in the same way as the sheriff of a county has hitherto been required by law to deliver a calendar of such prisoners when committed to the common gaol of the county, and the sheriff shall no longer be required to deliver or cause to be delivered such calendar.

63. *Removal of prisoners for trial.*] A prisoner may be brought up for trial, and may be removed by or under the direction of the gaoler from one prison to another, or from one place of confinement to another, to which such prisoner may be legally removed, for the purpose of being tried or undergoing his sentence, and no prisoner whilst in the custody of a gaoler shall be deemed to have escaped, although he may be taken into different jurisdictions or different places of confinement.

64. *Removal of prisoners in other cases.*] Prisoners may be removed from one prison to another prison or place of confinement within the jurisdiction of the same prison authority, or to the prison of any other authority, with the consent of such last-mentioned authority, by order of the justices in sessions assembled, for the purpose of enabling any prison to be altered, enlarged, or rebuilt, or in case of a contagious or infectious disease breaking out in any prison, or for any other reasonable cause; and in case of emergency such removal may be made in pursuance of an order under the hands of the visiting justices; and any prisoners removed from a prison in pursuance of this section may, by order of the justices in sessions assembled, be taken back by the gaoler to the prison from whence they were removed, or to any other place in which they can legally be imprisoned.

65. *Her Majesty may order prisoners to be removed from one prison to another.*

66. *Custody and trial of prisoners in a substituted prison.*] Where a prison authority, in this section called the contracting authority, has contracted with any other prison authority, in this section called the receiving authority, that the receiving authority is to receive into and maintain in its prison any prisoners maintainable at the expense of the contracting authority, the prison of the receiving authority shall for all the purposes of and incidental to the commitment, trial, detention, and punishment of the prisoners of the contracting authority, or any of such purposes, according to the tenor of the contract, be deemed to be the prison of the contracting authority, except that the contracting authority shall have no right to interfere in the management of the prison of the receiving authority.

67. *Misdemeanants of first division.*] In every prison to which this Act applies prisoners convicted of misdemeanor, and not sentenced to hard labour, shall be divided into at least two divisions, one of which shall be called the first division; and whenever any person convicted of misdemeanor is sentenced to imprisonment without hard labour it shall be lawful for the court or judge before whom such person has been tried to order, if such court or judge think fit, that such person shall be treated as a

misdemeanant of the first division, and a misdemeanant of the first division shall not be deemed to be a criminal prisoner within the meaning of this Act.

### PART III.

#### *Discontinuance of certain Prisons.*

68. *Prohibition of committals to prisons in second schedule.*] After the commencement of this Act no person shall be committed to any of the prisons mentioned in the second schedule hereto (a).

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71. *Power to use scheduled prisons as lock-up houses.*] The prison authority of any of the said scheduled prisons may sell the same in manner provided by this Act in case where a prison appears to a prison authority to be unnecessary by reason of its having provided for the accommodation of its prisoners in some other adequate prison, or may, with the sanction of the said secretary of state, cause the same to be used as a police station house or a lock-up house, and the money arising from any sale made in pursuance of this section shall be applied in discharging any expenses that may be incurred by such authority in the maintenance of its prisoners, or otherwise in aid of the rate applicable to prison purposes (b).

### PART IV.

#### *Repeal of Statutes, and Saving Clauses.*

73. *Acts and parts of Acts in third schedule repealed.*] After the commencement of this Act there shall be repealed the several Acts specified in the third schedule hereto to the extent in the said schedule mentioned.

74. *No repeal hereby enacted to affect any order made, &c.*] No repeal hereby enacted shall affect,—

1. Any order made, sentence passed, or other act or thing duly done under any Acts hereby repealed :
2. Any right or privilege acquired, any security given, or other liability incurred under any Act hereby repealed :
3. Any penalty, forfeiture, or other punishment incurred in respect of any offence against any Act hereby repealed :
4. Any appointment to an office made under any Act hereby repealed, or any power of removing the holder of such office, or otherwise dealing with such office as respects the existing holder thereof in manner provided by any Act hereby repealed :
5. The power of committing prisoners to any prison except in so far as the same may be altered in pursuance of powers given by this Act.

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(a) The remainder of this section relates to county prisons.

(b) The other provisions under Part III., relating to the scheduled prisons, are not inserted, as it may be presumed they were carried into effect soon after the passing of the Act.

75. *Certificates as to cells.*] All cells certified before the commencement of this Act by any inspector of prisons as being fit to be used for the separate confinement of prisoners shall be deemed to be cells certified for such purpose under this Act.

76. *Saving as to repealed provisions referred to in other Acts.*] Any unrepealed Act of parliament in which reference is made to the provisions of any Act hereby repealed shall be construed as if in such first-mentioned Act reference had been made to the corresponding provisions of this Act.

77. *Saving as to meaning of Gaol Act, 25 & 26 Vict. c. 44.*] In the construction of the Act of the twenty-fifth and twenty-sixth years of the reign of Her present Majesty, chapter forty-four, the expression "the Gaol Act" shall mean this Act instead of the Act therein referred to.

78. *Saving of rights of creditors.*

79. *Saving of superannuation allowance.*

80. *Saving as to rules.*] All rules in force in any prison that are inconsistent with this Act, or the regulations in the schedule hereto, shall be repealed from and after the commencement of this Act, but all other rules in force in any prison shall so continue until altered in manner in this Act provided.

81. *Saving as to appointment of officers.*] Nothing in this Act contained shall affect any right vested by Act of parliament or charter in the council of any municipal borough of appointing a gaoler, chaplain, or other officer to the prison of such borough.

82. *Saving as to commissions.*] Nothing in this Act contained relating to the custody of prisoners shall affect the validity of any commission of gaol delivery, commission of oyer and terminer, or other commission, precept, writ, warrant or other document, notwithstanding the same may be addressed to or make mention of the sheriff of any county, city, or place, instead of being addressed to or making mention of the gaoler of a prison or prisons; and every such commission, precept, writ, warrant, or other document shall be obeyed by the gaoler, and take effect in the same manner as if the gaoler had been named therein instead of the sheriff.

For SCHEDULES, see "Glen's Prisons Act," Shaw & Sons, Fetter Lane, E.C. (1865).

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## 29 & 30 VICT. CAP. XLI.

An Act to amend the Nuisances Removal and Diseases Prevention Act, 1860. [28th June, 1866.]

WHEREAS it is expedient that the provisions of the Act twenty-third and twenty-fourth Victoria, chapter seventy-seven, as to the power of justices of the peace to act in cases other than appeals arising under "The Nuisances

Removal Act for England, 1855," should be repealed, and that the said Act of the twenty-third and twenty-fourth Victoria, chapter seventy-seven, should be amended as hereinafter mentioned: be it enacted, &c.

1. *Sect. 16 of 23 & 24 Vict. c. 77, repealed.*] The sixteenth section of the Act of the twenty-third and twenty-fourth Victoria, chapter seventy-seven, shall be and is hereby repealed.

2. *No justice to be incapable of acting because member of body authorized to execute Act or liable to contribute.*] No justice of the peace shall be deemed incapable of acting in cases under the Nuisances Removal Act, or the Act of the twenty-third and twenty-fourth Victoria, chapter seventy-seven, by reason of his being a member of any body thereby declared to be the authority to execute the said Act, or by reason of his being a contributor or liable to contribute to any rate or fund out of which it is thereby provided that all charges and expenses incurred in executing the said Act, and not recovered as therein provided, shall be defrayed.

3. *Short title.*] This Act may be cited as "The Nuisances Removal Act (No. 1), 1866."

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29 & 30 VICT. CAP. C.

An Act for the Amendment of the Laws relating to Prisons.

[10th August, 1866.]

WHEREAS, in pursuance of the Act passed in the session holden in the third and fourth years of the reign of His late Majesty King William the Fourth, chapter seventy-one, intituled *An Act for the appointment of convenient places for the holding of assizes in England and Wales*, orders of Her Majesty in council have been made changing the places at which assizes may be held, and with a view to such changes requiring the prisoners of certain prison authorities to be removed to prisons beyond the jurisdiction of such authorities:

And whereas difficulties have arisen in relation to the maintenance of the prisoners so removed:

Be it enacted, &c.

1. *As to maintenance of prisoners removed out of the jurisdiction of the authority liable to maintain them.*] Where, in pursuance of any orders of Her Majesty in council, prisoners committed for offences arising within the jurisdiction of one prison authority hereinafter referred to as "the sending authority" have been or may hereafter be committed or sent to the prison of another authority hereinafter referred to as "the receiving authority," (a) then, if and so long as no contract with respect to the maintenance of such prisoners exists, all expenses that have previously to the passing of this Act been incurred or may hereafter be incurred by the receiving authority in

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(a) See 28 & 29 Vict. c. 126, s. 65, *ante*, p. cxcl.

the conveyance, maintenance, or care of the prisoners of the sending authority, or otherwise by reason of such prisoners having been committed or sent to the prison of the receiving authority, including a due proportion of the salaries of officers, and the expense of repairing, adding to, or altering the prison, shall be deemed to be a debt due from the sending authority to the receiving authority, and shall be payable out of the same rate or funds out of which the expenses of maintaining the prisoners of the sending authority are by law payable.

2. *Dispute as to amount to be determined by arbitration.*] Any dispute as to the amount of expenses payable by the sending authority to the receiving authority in pursuance of this Act shall be deemed to be a difference authorized by the Prisons Act, 1865 (*b*), to be settled by arbitration, and the provisions of the said Act shall apply accordingly.

3. *Time of payment of expenses by sending authority to receiving authority.*] Payment by the sending authority to the receiving authority of any expenses incurred before the passing of this Act shall be made by four equal yearly instalments, the first of such instalments to be paid within three months from the passing of this Act; and all monies so payable by instalments shall bear interest at the rate of four *per centum per annum* from the date of the passing of this Act until the time of the payment thereof.

Payment by the sending authority to the receiving authority of any expenses incurred after the passing of this Act shall be made half-yearly, or at such other times as may be determined by the said authorities; and any monies not paid at the time appointed for the payment thereof shall bear interest at the rate of four *per centum per annum* from such time until the time of the payment thereof.

4. *As to custody of prisoners in custody of receiving authority.*] The prison of the receiving authority shall, for all the purposes of and incidental to the commitment, trial, detention, and punishment of the prisoners of the sending authority, be deemed to have been and to be the prison of the sending authority, except that the sending authority shall have no right to interfere in the management of the prison of the receiving authority, and that the prisoners of the sending authority shall be in the legal custody of the gaoler of the prison of the receiving authority, and shall, as respects prison discipline, be in all respects subject to the jurisdiction of the receiving authority.

5. *Construction of Act.*] This Act may be cited for all purposes as the Prisons Act, 1866, and shall, so far as is consistent with the tenor thereof be construed as one with the Prisons Act, 1865 (*c*).

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(b) 28 & 29 Vict. c. 126, s. 51, *ante* p. clxxxviii.

(c) 28 & 29 Vict. c. 126, *ante*, p. clxxvi.

29 & 30 VICT. CAP. CXIV.

An Act to amend the Public Libraries Act.

[10 August, 1866.]

WHEREAS it is expedient to amend the Public Libraries Act, 1855 (*a*), and to assimilate the laws relating to public libraries in England and Scotland: be it therefore enacted, &c.

1. *Towns Improvement Clauses Act not to apply to boroughs.*] So much of the section fifteen of the said Public Libraries Act, 1855, as incorporates with that Act certain clauses of the Towns Improvement Clauses Act, 1847, shall, so far as the same relates to or concerns municipal boroughs, be repealed.

2. *Part of sect. 5 of recited Act repealed.—Expenses of executing Act in boroughs to be paid out of borough fund.*] Section five of the said Act, except so much thereof as relates to keeping distinct accounts, shall be repealed; and the expenses incurred in calling and holding the meeting, whether the said Act shall be adopted or not, and the expenses of carrying the said Act into execution in any municipal borough, may be paid out of the borough rate of such borough, or by and out of a rate to be made and recovered in such borough, in like manner as a borough rate may be made and recovered therein, but the amount so paid in such borough in any one year shall not exceed the sum of one penny in the pound upon the annual value of the property in such borough rateable to a borough rate. (Proviso as to the collection of a rate for a public library in the city of Oxford).

3. *In boroughs meeting to be called at the request of ten ratepayers.*] The public meeting mentioned in section four of the said Public Libraries Act, 1855, shall be called either on the request of the town council, or on the request in writing of ten ratepayers residing in the borough.

4. *Parishes adjoining a borough, &c., may unite in the adopting Act.*] Any parish of whatever population, adjoining any borough \* \* which shall have adopted or shall contemplate the adoption of the said Public Libraries Act, 1855, may, with the consent of more than one half of the ratepayers thereof present at a meeting to be convened in manner directed by the said Act with reference to meetings of ratepayers, and with the consent also of the town council of such borough \* \* \* determine that such adjoining parish shall for the purposes of the said Act form part of such borough \* \* and thereupon the vestry of such adjoining parish shall forthwith appoint three ratepayers commissioners for such parish, one third of whom (*b*) shall go out of office, and the vacancies be filled up as provided by the said Act with respect to the commissioners of a parish (*c*), and such commissioners for the time being shall for the

(*a*) 18 & 19 Vict. c. 70, *ante*, p. cxi. In the Queen's printer's copy reference is erroneously made to cap. 95.

(*b*) *Scil.* one commissioner.

(*c*) "The outgoing commissioners may be re-elected; and the vestry shall fill up every vacancy among the commissioners, whether occurring by death, resignation, or otherwise as soon as possible after the same occurs." 18 & 19 Vict. c. 70. s. 9.



purposes of the said Act be considered as part of such town council \* \* and the expenses of calling the meeting, and the proportion of the expenses of such adjoining parish of carrying the said Act into execution, shall be paid out of the poor rates thereof to such person as the commissioners of the said adjoining parish shall appoint to receive the same.

5. *A Majority of one half of the ratepayers may adopt Act.*] The majority necessary to be obtained for the adoption of the said Act \* \* shall be more than one half of the persons present at the meeting, instead of two-thirds of such persons as now required (d).

6. *Act may be adopted whatever amount of population.*] The Public Libraries Act, 1855 \* \* shall be applicable to any borough \* \* of whatever population.

10. (e) *A library or museum may be established in connexion with any museum or library.*] Wherever a public museum or library has been established under any Act relating to public libraries or museums, or shall hereafter be established under either of the said before-mentioned Acts, a public library or museum, as the case may be, may at anytime be established in connexion therewith without any further proceedings being taken under the said Acts.

11. *Short title.*] This Act may be cited as the Public Libraries Amendment Act (England and Scotland), 1866, and shall be taken to be part of the said Public Libraries Act, 1855, and shall be construed accordingly.

### 30 & 31 VICT. CAP. LXXV.

An Act to remove certain Religious Disabilities affecting some of Her Majesty's subjects, and to amend the law relating to Oaths of Office.  
[12th August, 1867.]

WHEREAS certain of Her Majesty's subjects are now, on the ground of their religious belief, subject to civil disabilities, and are required to take oaths for the enjoyment of offices and franchises which other subjects of Her Majesty are not required to take:

And whereas it is expedient to remove such disabilities, and to substitute one uniform oath for the several oaths now required to be taken by different classes of Her Majesty's subjects as a qualification for the exercise and enjoyment of offices, franchises, and civil rights:

Be it enacted, &c.

4. *Every judicial or corporate officer may attend his place of worship in his robes.*] Every person holding any judicial or civil or corporate office may attend and be present at any place of public meeting for religious

(d) By 18 & 19 Vict. c. 70, s. 4, *ante*, p. cxli.

(e) Sections 7, 8, & 9, relate to Scotland.

worship in England \* \* in the robe, gown, or other peculiar habit of his office, or with the ensign or insignia of or belonging to the same, without incurring any forfeiture of office or penalty for such attendance.

8. (a) *Short title.*] This Act may be cited for all purposes as the "Office and Oaths Act, 1867."

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30 & 31 VICT. CAP. CXV.

An Act to remove disqualifications of Justices of the Peace in certain cases.  
[20th August, 1867.]

In order that justices of the peace may act in the execution of Acts in some cases in which they now are incapable of so acting, be it enacted, &c.

1. *Short title.*] This Act may for all purposes be cited as "Justices of the Peace Act, 1867."

2. *Justices not incapable of acting in execution of Acts in cases specified.*] A justice of the peace shall not be incapable of acting as a justice at any petty or special or general or quarter sessions on the trial of an offence arising under an Act to be put in execution by a municipal corporation, or a local board of health, or improvement commissioners, or trustees, or any other local authority, by reason only of—

(a) His being, as one of several ratepayers, or as one of any other class of persons, liable in common with the others to contribute to or to be benefited by any fund to the account of which the penalty payable in respect of such offence is directed to be carried or of which it will form part, or to contribute to any rate or expenses in diminution of which such penalty will go.

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30 & 31 VICT. CAP. CXLII.

An Act to amend the Acts relating to the Jurisdiction of the County Courts.  
[20th August, 1867.]

29. *Where action unnecessarily brought in an inferior court, only county court costs to be allowed.*] Where any action or suit shall be brought in any other court than the superior courts of law which could have been brought in a county court, and the verdict recovered is for a less sum than ten pounds, the plaintiff shall not recover from the defendant a greater amount of costs than he would have been allowed if the action or suit had been brought in such county court, unless the judge shall certify that the action or suit was a fit one to be brought in such other court.

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(a) Sections 5, 6, and 7 related to the oaths, &c., to be taken; but other provisions have been substituted by 31 & 32 Vict. c. 72, *post*, p. ccv, and these sections have been repealed by 34 & 35 Vict., *post*, p. ccx.

## 31 VICT. CAP. XXI.

An Act to provide compensation to Officers of certain Discontinued Prisons.  
[29th May, 1868.]

WHEREAS by "The Prison Act, 1865" (b), certain prisons mentioned in the second schedule (c) to the said Act are directed to be discontinued: and whereas by the seventy-second section of the said Act the justices in sessions assembled are empowered to award compensation to any person deprived of any salary or emolument by the discontinuance of any of the said prisons: and whereas it is expedient to extend the power of awarding compensation to all cases in which prisons are discontinued:

Be it enacted, &c.

1. *Short title.*] This Act may be cited for all purposes as the "Prison Officers Compensation Act, 1868."

2. *Construction of Act.*] This Act shall be construed as one with the Prisons Act, 1865.

3. *Compensation to officers of all discontinued prisons.*] The justices in sessions assembled having jurisdiction over any such discontinued prison as is hereinafter mentioned may allow such compensation or superannuation allowance as they think fit to any person who, by reason of the discontinuance of such prison, is deprived of any salary or emolument, so that no such compensation or superannuation allowance exceed the proportion of the salary or emolument which might be granted under similar circumstances to a person in the civil service under the Acts for regulating such compensations or superannuation allowances for the time being in force; and any compensation or superannuation allowance so allowed shall be paid out of any rates or property applicable to the payment of the salaries of the officers of such prison before the discontinuance thereof, subject to this proviso, that when the power to levy such rates or such property is vested in a different body from the justices, the consent of such last-mentioned body shall be obtained to the amount of compensation or superannuation allowance allowed.

"Discontinued prison" shall for the purposes of this section mean any prison other than the prisons specified in the second schedule to the said Prisons Act (c) which has ceased to be used as a prison since the date of the passing of the said Prisons Act, 1865, or which may hereafter cease to be used as a prison.

4. *As to expression "justices in sessions assembled."*] The expression "justices in sessions assembled" shall in this Act mean as follows; that is to say:

\* \* \* \* \*

4. As respects any prison belonging to any municipal borough, the

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(b) 28 & 29 Vict. c. 126, *ante*, p. clxxvi.

(c) See "Glen's Prisons Act," Shaw and Sons (1865).

justices of the borough assembled at sessions to be held by them at the usual time of holding quarterly sessions of the peace, or at such other time as they may appoint:

5. As respects any prison belonging to any city, district, borough, or town having a separate prison jurisdiction, and not hereinbefore mentioned, the justices or other persons having power at law to make rules for the government of such prison.

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### 31 VICT. CAP. XXII.

An Act to amend the Law relating to Places for holding Petty Sessions and to Lock-up Houses for the temporary confinement of Persons taken into Custody and not yet committed for trial. [29th May, 1868.]

WHEREAS it is expedient to amend the law relating to places for holding petty sessions, and to lock-up houses for the temporary confinement of persons taken into custody and not yet committed for trial:

Be it therefore enacted, &c.

1. *Short title.*] This Act may be cited for all purposes as “The Petty Sessions and Lock-up Houses Act, 1868.”

\* \* \* \* \*

3. *Interpretation of terms.*] For the purposes of this Act—

\* \* \* \* \*

“Borough” shall mean any place for the time being subject to an Act passed in the session holden in the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled *An Act to provide for the regulation of municipal corporations in England and Wales*:

“Local authority” shall mean,—

\* \* \* \* \*

In any borough having a separate commission of the peace,—the council of the borough.

4. *Power to two or more authorities to agree for common sessions house.*] Two or more local authorities may, with the approval of one of Her Majesty’s principal secretaries of state, contract that a place for the holding of petty sessions by each of such authorities shall be provided at the joint expenses of such authorities in such manner and proportions as in the said contract mentioned.

5. *Power to local authority to contract for sessions house.*] Where any local authority is in possession of a convenient building for holding petty sessions or for transacting business authorized by any Act of parliament to be performed by justices out of petty sessions, any neighbouring local authority may contract with such former authority for the use by themselves, of such building for such purposes of any of them, and may use the same accordingly.

6. *Power to local authorities to contract for lock-up houses.*] Any local authority may, with the approval of one of Her Majesty's principal secretaries of state, contract with any neighbouring local authority for the reception by such authority into their lock-up house, and the custody and maintenance therein, of any persons who would otherwise be liable to be placed in a lock-up house situate within the jurisdiction of the former authority.

7. *Contracts may include cost of conveyance.*] Any contract entered into between any local authorities for the reception into and custody in the lock-up house of one authority of persons belonging to the jurisdiction of the other authority may include the costs of conveying such persons to and from such lock-up houses previously to their committal for trial, and also the cost of conveying them to prison when committed for trial.

8. *Petty sessions houses and lock-ups to be deemed to be within the jurisdiction of contracting local authorities.*] Where any contract has been made by any two or more local authorities in pursuance of this Act in relation to any place for holding petty sessions, or for transacting business to be performed by justices out of petty sessions, such place for all purposes of and incidental to the holding of petty sessions and of the orders to be made and the other business to be transacted thereat, shall be deemed to be within the jurisdiction of each of such authorities respectively, and where any contract has been made by any two or more local authorities in pursuance of this Act in relation to any lock-up house, such lock-up house for all purposes of and incidental to the power to detain therein and remand thereto, and to convey thereto and therefrom, persons taken into custody, and for all other purposes of a lock-up house, shall be deemed to be within the jurisdiction of each of such authorities respectively.

9. *Expenses how to be provided.*] All expenses payable by one local authority to another in pursuance of any contract made in pursuance of this Act shall be raised and defrayed in the same manner as such expenses would have been raised and defrayed if they had been incurred for the purposes of and in relation to the subject matter of such contract by and within the jurisdiction of the authority that has contracted to pay the same.

10. *Effect of approval of secretary of state and evidence of transactions.*] The approval of one of Her Majesty's principal secretaries of state, when given to any contract made in pursuance of this Act, shall be conclusive evidence that such contract is within, and has been duly made in pursuance of, the provisions of this Act: and a copy of the *London Gazette* purporting to contain an announcement of any of the following facts:—

1. That a common lock-up house has been established for the reception of persons taken into custody within any two or more jurisdictions, and not yet committed for trial:
2. That a place has in pursuance of this Act been constituted a place for holding the petty sessions of particular petty sessional divisions, or for transacting business to be performed by justices out of petty sessions:
3. That a lock-up house situate in any particular place has been partly appropriated for the reception of persons who would otherwise be liable to be placed in a lock-up house situate within some other jurisdiction:

shall be evidence of the facts stated in such announcement.

11. *Power to local authority to form committee of its own members and others.*] Any local authority may form a committee consisting of two or more of its members, and may delegate to such committee all or any powers conferred on them by this Act, and may from time to time revoke or alter any power so given to such committee.

A committee may elect a chairman of their meetings. If no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting. A committee may meet and adjourn as they think proper. Every question at a meeting shall be determined by a majority of votes of the members present, and voting on that question; and in case of an equal division of votes the chairman shall have a second or casting vote.

The proceedings of a committee shall not be invalidated by any vacancy or vacancies amongst its members, or, in case of a county, by the termination of the sessions by which they were appointed.

12. *Powers under this Act to be in addition to powers under other Acts.*] All powers conferred by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred by any other Act of parliament, and any such other powers may be exercised as if this Act had not passed.

### 31 & 32 VICT. CAP. XLI.

An Act to make Provision in the Case of Boroughs ceasing to return Members to serve in Parliament respecting Rights of Election which have been vested in Persons entitled to vote for such Members.

[13th July, 1868.]

WHEREAS in certain boroughs in England the persons entitled to vote for members to serve in parliament for such boroughs are electors for other purposes, and it is expedient to make provision respecting electors for those purposes in the case of boroughs which will cease to return members after the next dissolution of parliament :

Be it enacted, &c.

1. *Short title.*] This Act may be cited as "The Borough Electors Act, 1868."

2. *Interpretation of terms.*] In this Act—

The terms "parliamentary borough" and "parliamentary electors" mean respectively a borough which, prior to the passing of "The Representation of the People Act, 1867," returned a member or members to serve in parliament, and the persons for the time being entitled to vote for such members or member :

The term "municipal borough" means a place subject to the provisions of the Act of the session of the fifth and sixth years of the reign of His Majesty William the Fourth, chapter seventy-six, intituled *An Act to provide for the regulation of municipal corporations in England and Wales* :

The term "burgesses" means the persons on the burgess roll for the time being in force in a municipal borough.

3. *On parliamentary electors ceasing to return members in pursuance of 30 & 31 Vict. c. 102, municipal burgesses substituted.*] Wherever the parliamentary electors in any place in England, where there is both a municipal and parliamentary borough, are by law electors for any other purpose, and the parliamentary borough in pursuance of "The Representation of the People Act, 1867," or of any Act passed in the present session, will cease after the next dissolution of parliament to return a member to serve in parliament, the burgesses of the municipal borough shall be electors for such purpose, and shall in all respects, so far as regards such purpose, be substituted for the parliamentary electors.

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### 31 & 32 VICT. CAP. LXXII.

An Act to amend the Law relating to Promissory Oaths.

[31st July, 1868.]

WHEREAS it is expedient to amend the law relating to promissory oaths, be it enacted, &c. :—

1. *Short title.*] This Act may be cited for all purposes as the "Promissory Oaths Act, 1868."

### PART I.

*Oaths to be continued.*

2. *Form of oath of allegiance.*] The oath in this Act referred to as the oath of allegiance shall be in the form following; that is to say,

I, —, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her heirs and successors, according to law. So help me God.

3. *Form of official oath (a).*]

4. *Form of judicial oath.*] The oath in this Act referred to as the judicial oath, shall be in the form following; that is to say,

I, —, do swear that I will well and truly serve our Sovereign Lady Queen Victoria, in the office of —, and I will do right to all manner of people, after the laws and usages of this realm, without fear or favour, affection or illwill. So help me God.

5. *Persons to take the oath of allegiance and official oath (b).*

6. *Persons to take the oath of allegiance and judicial oath.*] The oath of allegiance and judicial oath shall be taken by each of the officers named in the second part of the said schedule hereto (c) as soon as may be after his

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(a) This oath is not required to be taken by any municipal officer.  
 (b) Not including any municipal officer.  
 (c) Including "justices of the peace for boroughs."

acceptance of office, and such oaths shall be tendered and taken in manner in which the oaths required to be taken by such officer previously to the passing of this Act on entering his office would have been tendered and taken.

7. *Penalty on not taking required oath.*] If any officer specified in the schedule hereto declines or neglects, when any oath required to be taken by him under this Act is duly tendered, to take such oath, he shall, if he has already entered on his office, vacate the same, and if he has not entered on the same be disqualified from entering on the same; but no person shall be compelled, in respect of the same appointment to the same office, to take such oath or make such affirmation more times than one.

8. *Form of oath of allegiance in this Act substituted for form in certain other Acts.*] The form of the oath of allegiance provided by this Act shall be deemed to be substituted \* \* \* in the case of the Office and Oaths Act, 1867 (a), for the form of the oaths of allegiance, supremacy, and abjuration therein referred to; and all the provisions of the said Acts shall apply to the oath substituted by this section in the same manner as if that form of oath were actually inserted in each of the said Acts in the place of the oath for which it is substituted.

9. *Prohibition of oath of allegiance except in accordance with Act.*] No person shall be required or authorized to take the oaths of allegiance, supremacy, and abjuration, or any of such oaths, or any oath substituted for such oaths, or any of them, or to make any declaration to the like effect of such oaths, or any of them, except the persons required to take the oath of allegiance by this Act \* \* \*, any Act of parliament, charter, or custom to the contrary notwithstanding. \* \* \*

10. *The name of the Sovereign for the time being to be used in the oath.*] Where in any oath under this Act the name of Her present Majesty is expressed, the name of the Sovereign of this kingdom for the time being shall be substituted from time to time.

11. *Provision in favour of persons permitted to make affirmations.*] When an oath is required to be taken under this Act, every person for the time being by law permitted to make a solemn affirmation or declaration instead of making an oath may, instead of taking such oath, make a solemn affirmation in the form of the oath hereby appointed, substituting the words "solemnly, sincerely, and truly declare and affirm" for the word "swear," and omitting the words "So help me God."

## PART II.

### *Oaths to be abolished.*

12. *Regulations as to substitution of declarations for oaths.*] The following regulations shall be enacted with respect to the substitution of declarations for oaths; (that is to say),—

\* \* \* \* \*

2. Where before the passing of this Act an oath was required to be taken



by any person on or as a condition of accepting any office in or under a municipal corporation, or on or as a condition of admission to membership in or participation in the privileges of any municipal corporation, there shall be substituted for such oath, in the case of an office, a declaration that the declarant will faithfully perform the duties of his office; and in the case of admission to membership or participation in the privileges of a municipal corporation, a declaration that the declarant will faithfully demean himself as a member of or participator in the privileges of such corporation:

\* \* \* \* \*

4. Where in any case not otherwise provided for by this Act or included within the saving clauses thereof an oath is required to be taken by any person on or as a condition of his accepting any employment or office, a declaration shall be substituted for such oath to the like effect in all respects as such oath:
5. The making a declaration in pursuance of this section instead of oath shall in all respects have the same effect as the taking the oath for which such declaration is substituted would have had if this Act had not passed.

13. *Penalty on not making declaration required by this Act.*] If any person required by this Act to make a declaration instead of an oath declines or neglects to make such declaration, he shall be subject to the same penalties and disabilities, if any, as he would have been subjected to for declining or neglecting to take the oath for which the declaration provided by this Act is substituted.

### PART III.

#### *Saving Clause.*

14. *Not to affect matters herein stated.*] Nothing in this Act contained shall affect—

\* \* \* \* \*

10. Any oath required or authorized by Act of parliament to be taken or made for the purpose of attesting any fact or verifying any account or document:

\* \* \* \* \*

12. Any oath required to be taken by any juror, witness, or other person in pursuance of any Act of parliament or custom as preliminary to or in the course of any civil, military, criminal, or other trial, inquest, or proceedings of a judicial nature, including any arbitration, or as preliminary to or in the course of any proceedings before a committee of either house of parliament, or before any commissioner or other special tribunal appointed by the Crown.

15. *Saving of powers of alteration hitherto exercised.*] Where a declaration has been substituted for an oath under this Act, any person, guild, body corporate, or society which before the passing of this Act had power to alter such oath, or to substitute another oath in its place, may exercise a like power with regard to such declaration.

16. *General saving as to matters herein stated.*] Where previously to the passing of this Act the taking of any oath formed a condition precedent

or subsequent to the attainment by any person of any office, privilege, exemption, or other benefit, and such person is by this Act prevented from fulfilling such condition, he shall nevertheless, on complying with the other conditions, if any, attached to the attainment of such office, privilege, exemption, or other benefit, be entitled thereto in the same manner as if the condition relating to such oath, and any directions as to the certificate or registration of the taking of such oath, or otherwise, had been fulfilled and performed.

### 32 & 33 VICT. CAP. XXIII.

An Act to extend the Power of Recorders to appoint Deputies in certain cases. [12th July, 1869.]

WHEREAS by an Act passed in the sixth and seventh years of the reign of Her present Majesty, intituled, *An Act to amend the Act for the regulation of municipal corporations in England and Wales* (a), the recorders of boroughs having separate courts of quarter sessions are authorized and empowered, in case of sickness or unavoidable absence, to appoint deputies for the time being, and it is expedient to extend to recorders in the exercise of their civil jurisdiction as judges of the local courts of record in such boroughs, or any of them, a similar power in like cases :

Be it therefore enacted, &c.

1. *Power to recorders exercising jurisdiction as justices of local courts of record to appoint deputies in certain cases to act in such courts.*] That the recorder of every borough in which, by charter, custom, or otherwise, there is or ought to be holden a court or courts of record for the trial of civil actions, of which court or courts the recorder is the judge, shall be and he is hereby empowered, in case of sickness or unavoidable absence, to appoint under his hand and seal a barrister of not less than five years standing as his deputy to act for him and in his stead as judge of the court or courts of record then next to be held, or then being held, and not longer or otherwise; and the recorder upon every occasion of the appointment of a deputy shall forthwith send to the secretary of state for the Home Department a statement of the reason why such appointment has become necessary: provided nevertheless, that such court or courts shall not be deemed to have been illegally held, nor the acts of such deputy invalidated, by reason of the cause of absence of the recorder not being deemed to be unavoidable within the meaning of this Act.

### 32 & 33 VICT. CAP. LIII.

An Act to amend the Cinque Ports Act.

[2nd August, 1869.]

(a) 6 & 7 Vict. c. 89 *ante* p. cx.

## 32 &amp; 33 VICT. CAP. LV.

An Act to shorten the Term of Residence required as a Qualification for the Municipal Franchise, and to make provision for other purposes.

[2nd August, 1869.]

WHEREAS it is expedient to shorten the term of occupation and residence required as a qualification for the municipal franchise, and to make provision for other purposes :

Be it therefore enacted, &c.

1. *Sect. 9 of 5 & 6 Will. 4, c. 76 repealed.*—*One year's occupation to entitle persons to municipal franchise.*] The ninth section of the Act of the session of the fifth and sixth years of King William the Fourth, chapter seventy-six, shall be repealed, and instead thereof be it enacted, that every person of full age who on the last day of July in any year shall have occupied any house, warehouse, counting-house, shop, or other building within any borough during the whole of the preceding twelve calendar months, and also during the time of such occupation shall have resided within the said borough, or within seven miles of the said borough, shall, if duly enrolled in that year according to the provisions contained in the said Act of the session of the fifth and sixth years of King William the Fourth, chapter seventy-six, and the Acts amending the same, be a burgess of such borough and member of the body corporate of the mayor, aldermen, and burgesses of such borough: provided that no such person shall be so enrolled in any year unless he shall have been rated in respect of such premises so occupied by him within the borough to all rates made for the relief of the poor of the parish wherein such premises are situated during the time of his occupation as aforesaid, and unless he shall have paid on or before the twentieth day of July in such year all such rates, including therein all borough rates, if any, directed to be paid under the provisions of the said Acts, as shall have become payable by him in respect of the said premises up to the preceding fifth day of January: provided also, that the premises in respect of the occupation of which any person shall have been so rated need not be the same premises or in the same parish, but may be different premises in the same parish or in different parishes: provided also, that no person being an alien shall be so enrolled in any year; and that no person shall be so enrolled in any year who, within twelve calendar months next before the said last day of July, shall have received parochial relief or other alms: provided also, that the respective distances mentioned in this Act shall be measured in the manner directed by section seventy-six of the Act of the session of the sixth and seventh years of Queen Victoria, chapter eighteen (b).

2. *Saving rights under existing burgess roll.*

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(b) "*An Act to amend the law for the registration of persons entitled to vote and to define certain rights of voting and to regulate certain proceedings in the election of members to serve in parliament for England and Wales.*" Sect. 76 declares and enacts "that the said distance (seven miles) shall be understood to be the distance of seven miles as measured in a straight line on the horizontal plane from the point within any city or borough \* \* from which such distance is to be measured \* \* provided always that in cases where there is now or shall hereafter be a map of any city or borough, and of the county surrounding the same, drawn or published under the authority and direction of the principal officers of Her Majesty's ordnance, such distance may be measured and determined by the said map."

3. *Councillor or alderman may reside within fifteen miles of borough.*] Any such occupier as aforesaid, who shall be rated in respect of premises as in this Act mentioned, shall be entitled to be elected a councillor or an alderman of any borough, if resident within fifteen miles of said borough, although by reason of his residence beyond seven miles of the borough he is not entitled to be on the burgess roll of such borough, provided that he is otherwise qualified to be on the burgess roll, and to be elected a councillor or an alderman for such borough, and the following enactments shall take effect with respect to such occupiers (a):

1. The overseers shall make out and publish a separate list containing the name of every such occupier at the same time and in the same manner as the burgess list, and all the provisions of the said Act of the fifth and sixth William the Fourth, chapter seventy-six, and the Acts amending the same with respect to objections and claims shall, as nearly as circumstances admit, apply to such separate list.
2. The separate list so made out shall be revised in the like manner as the burgess list, and when so revised shall be delivered to the town clerk and copied as a separate list at the end of the burgess roll.

4. *Qualification for aldermen and councillors.*] When any borough, consisting of less than four wards, shall at any time hereafter be divided into a greater number of wards, the qualification for an alderman or councillor of such borough shall not be increased or altered in consequence of such division, but shall continue the same as if such borough consisted of less than four wards.

5. *Proprietors of shares in companies not to be deemed contractors, &c., and not to be disqualified from election to municipal offices by reason of such holding.*] From and after the passing of this Act no person shall be deemed to have had or to have an interest in a contract or employment with, by, or on behalf of the council of any borough by reason only of his having had or having a share or interest in any railway company or in any company incorporated by Act of parliament or by royal charter, or under "The Companies Act, 1862," and no councillor, alderman, or mayor in any municipal corporation shall be deemed to have been or to be disqualified to be elected or to be such councillor, alderman, or mayor by reason only of his having had or having any share or interest in any railway company or in any company incorporated by Act of parliament or royal charter, or under "The Companies Act, 1862," but all elections of councillors, aldermen, or mayors as aforesaid shall be deemed and taken to have been and to be valid, notwithstanding any such share or interest as aforesaid.

6. *Who may nominate for office of auditor and assessor (b).*] At any election of auditors, or revising assessors (c), any person entitled to vote may nominate for the office of auditor or assessor, in like manner as such person can nominate for the office of councillor under and by virtue of the provisions in that behalf contained in the twenty-second Victoria, chapter thirty-five, and the proceedings in relation to such nomination and election shall be in all respects the same as are prescribed in the said Act in relation to the election of councillors.

7. *Time for receipt of nominations (b).*] Every nomination for the office of councillor, assessor, or auditor must be sent to the town clerk so that the

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(a) See 38 & 39 Vict. c. 40, s. 1, sub-sect. (2) *post*, p. ccxciii.

(b) Repealed by 38 & 39 Vict. c. 40, s. 12, Sched. 2, *post*, p. ccxcix.

(c) Ward assessors were abolished by 35 & 36 Vict. c. 33, s. 21, *post*, p. ccxv.

same shall be received in his office before five o'clock in the afternoon of the last day on which any such nomination may by law be made.

8. *Elections to supply extraordinary vacancies.*] If an extraordinary vacancy shall happen in the office of assessor, and at the same time a vacancy shall exist or arise in the office of councillor which cannot be legally filled up before the vacant office of assessor has been or can be by law filled up, the election to supply such vacant office of councillor shall be held before the alderman of the ward, or the mayor where the borough is not divided into wards, the continuing assessor, and such burgess (not being a burgess representing or enrolled on the burgess list for that ward, if the borough is divided into wards), as the mayor shall by writing under his hand appoint.

9. *Words importing the masculine gender to include females.*] In this Act and the said recited Act of the fifth and sixth years of King William the Fourth, chapter seventy-six, and the Acts amending the same wherever words occur which import the masculine gender the same shall be held to include females for all purposes connected with and having reference to the right to vote in the election of councillors, auditors, and assessors.

10. *Act to be construed with 5 & 6 Will. 4, c. 76, &c.*] This Act shall be construed as one with the said Act of the session of the fifth and sixth years of King William the Fourth, chapter seventy-six, and the Acts amending the same, except so far as the same are altered or repealed by this Act, and the words used in this Act shall have the same meaning as in the said Acts.

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### 32 & 33 VICT. CAP. LXII.

An Act for the Abolition of Imprisonment for Debt, for the punishment of Fraudulent Debtors, and for other purposes. [9th August, 1869.]

21. *Mayors, &c., disqualified by arrangements.*] The provisions of the Act of the session of the fifth and sixth years of William the Fourth, chapter seventy-six, for the regulation of municipal corporations, sections fifty-two and fifty-three (*b*), as to the disqualification of mayors, aldermen, and town councillors having been declared bankrupt or having compounded by deed with their creditors, shall extend to every arrangement or composition by a mayor, alderman, or town councillor with his creditors under "The Bankruptcy Act, 1869," whether the same is made by deed or otherwise.

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### 33 & 34 VICT. CAP. LXXV.

An Act to provide for public Elementary Education in England and Wales. [9th August, 1870.]

91. *Corrupt practices.*] Any person who at the election of any member of a school board or any officer appointed for the purpose of such election is guilty of corrupt practices shall, on conviction, for each offence be liable to a penalty not exceeding two pounds, and be disqualified for the term of

six years after such election from exercising any franchise at any election under this Act, or at any municipal or parliamentary election.

The term corrupt practices in this section includes all bribery, treating, and undue influence which under any Act relating to a parliamentary election renders such election void.

34 & 35 VICT. CAP. XLVI.

An Act for amending the Law relating to the appointment of the Gaoler, Chaplain, and Matron of the Prison of the City of Bath.

[13th July, 1871.]

34 & 35 VICT. CAP. XLVIII.

An Act to repeal divers enactments relating to Oaths and Declarations which are not in force; and for other purposes connected therewith.

[13th July, 1871.]

2. *Persons before whom oaths to be taken.*] Whereas by the Promissory Oaths Act, 1868 (*a*), it is provided that the oaths of allegiance and judicial oath should be taken by each of certain officers therein mentioned, in manner in which the oaths required to be taken by such officer previously to the passing of that Act would have been taken; and it is desirable, with a view to the revision of the statute law, to define the manner in which such oaths are to be taken: be it enacted that each such officer shall take the said oaths before such persons as Her Majesty may from time to time appoint; or,

In England, before the Lord High Chancellor of Great Britain, or in the Court of Chancery, Queen's Bench, Common Pleas, or Exchequer, in open court before one or more of the judges of such court, or in open court at the general or quarter sessions of the peace for the county, borough, or place in which the person taking the oaths acts as justice.

3. *Short title.*] This Act may be cited as "The Promissory Oaths Act, 1871."

34 & 35 VICT. CAP. LXVII.

An Act to amend the Municipal Corporation Act of 1859, with respect to the division of Boroughs into Wards.

[14th August, 1871.]

WHEREAS it is expedient that the law relating to municipal elections in England and Wales, so far as regards the division of certain boroughs into wards, should be amended:

Be it enacted, &c.

1. *Short title.*] This Act may be cited as "The Municipal Corporations Act, 1859, Amendment Act."

(a) 31 & 32 Vict. c. 72, see sect. 6, *ante*, p. cciii.

2. *Provision for representation of new and altered wards in municipal boroughs.*] Section four of "The Municipal Corporation Act, 1859 (b)," is hereby repealed, and in lieu thereof be it enacted as follows :

On the division of any borough into wards, the revising barrister shall apportion all the councillors for such borough amongst the wards into which it shall have been so divided; and in case of the alteration of the number and boundaries of the wards of any borough already divided into wards, the revising barrister shall apportion the councillors for the wards so altered amongst the new wards in such manner as to provide, so far as may be practicable, for such councillors continuing to represent as large a number as possible of their former constituents; and every councillor for the borough so divided, or for the wards so altered, as the case may be, shall hold his office in the ward to which he may be assigned by the revising barrister for the same time that he would have held it had the said borough or wards remained undivided or unaltered.

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### 35 & 36 VICT. CAP. XXXIII.

An Act to amend the Law relating to Procedure at Parliamentary and Municipal Elections. [18th July, 1872.]

WHEREAS it is expedient to amend the law relating to procedure at parliamentary and municipal elections :

Be it enacted, &c.

### PART I.

#### *Parliamentary Elections (c).*

\* \* \* \* \*

2. *Poll at elections.*] In the case of a poll at an election the votes shall be given by ballot. The ballot of each voter shall consist of a paper (in this Act called a ballot paper) showing the names and description of the candidates. Each ballot paper shall have a number printed on the back, and shall have attached a counterfoil with the same number printed on the face. At the time of voting, the ballot paper shall be marked on both sides with an official mark, and delivered to the voter within the polling station, and the number of such voter on the register of voters shall be marked on the counterfoil, and the voter having secretly marked his vote on the paper, and folded it up so as to conceal his vote, shall place it in a closed box in the presence of the officer presiding at the polling station (in this Act called "the presiding officer") after having shown to him the official mark at the back.

Any ballot paper which has not on its back the official mark, or on which votes are given to more candidates than the voter is entitled to vote for, or on which anything, except the said number on the back, is written or marked by which the voter can be identified, shall be void and not counted.

After the close of the poll the ballot boxes shall be sealed up, so as to prevent the introduction of additional ballot papers, and shall be taken

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(b) 22 Vict. c. 35, *ante*, p. clii.

(c) The enactments which relate exclusively to parliamentary elections are omitted, as belonging rather to the general law on that subject.

charge of by the returning officer (a), and that officer shall, in the presence of such agents, if any, of the candidates as may be in attendance, open the ballot boxes, and ascertain the result of the poll by counting the votes given to each candidate, and shall forthwith declare to be elected the candidates or candidate to whom the majority of votes have been given \* \* The decision of the returning officer as to any question arising in respect of any ballot paper shall be final, subject to reversal on petition questioning the election or return (b).

3. *Offences in respect of nomination papers, ballot papers, and ballot boxes.*] Every person who,—

- (1). Forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to the returning officer any nomination paper, knowing the same to be forged; or
- (2). Forges or counterfeits or fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper; or
- (3). Without due authority supplies any ballot paper to any person; or
- (4). Fraudulently puts into any ballot box any paper other than the ballot paper which he is authorized by law to put in; or
- (5). Fraudulently takes out of the polling station any ballot paper; or
- (6). Without due authority destroys, takes, opens, or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the election;

shall be guilty of a misdemeanor, and be liable, if he is a returning officer or an officer or clerk in attendance at a polling station, to imprisonment for any term not exceeding two years, with or without hard labour, and if he is any other person, to imprisonment for any term not exceeding six months with or without hard labour.

Any attempt to commit any offence specified in this section shall be punishable in the manner in which the offence itself is punishable.

In any indictment or other prosecution for an offence in relation to the nomination papers, ballot boxes, ballot papers, and marking instruments at an election, the property in such paper, boxes, and instruments may be stated to be in the returning officer at such election, as well as the property in the counterfoils (c).

4. *Infringement of secrecy.*] Every officer, clerk, and agent in attendance at a polling station shall maintain and aid in maintaining the secrecy of the voting in such station, and shall not communicate, except for some purpose authorized by law, before the poll is closed, to any person any information as to the name or number on the register of voters of any elector who has or has not applied for a ballot paper or voted at that station or as to the official mark, and no such officer, clerk, or agent, and no person whosoever shall interfere with or attempt to interfere with a voter when marking his vote, or otherwise attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted, or communicate at any time to any person any information obtained in a polling station as to the candidate for whom any voter in such station is about to vote or has voted, or as to the number on the back of the ballot paper given to any voter at such station. Every officer, clerk, and agent in attendance at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting, and shall not attempt to

(a) See sect. 20, sub-sect. 1.

(b) *Id.*, sub-sect. 2.

(c) This section is to apply to nomination papers under the 38 & 39 Vict. c. 40. See sect. 1, sub-sect. (4); and the term "returning officer" is to include the town clerk in reference to the delivery of such papers, *post*. p. ccxiv.



ascertain at such counting the number at the back of any ballot paper, or communicate any information obtained at such counting as to the candidate for whom any vote is given in any particular ballot paper. No person shall directly or indirectly induce any voter to display his ballot paper after he shall have marked the same, so as to make known to any person the name of the candidate for or against whom he has so marked his vote.

Every person who acts in contravention of the provisions of this section shall be liable, on summary conviction before two justices of the peace, to imprisonment for any term not exceeding six months, with or without hard labour.

\* \* \* \* \*

8. *General powers and duties of returning officers.*] Subject to the provisions of this Act every returning officer (c) shall provide such nomination papers, polling stations, ballot boxes, ballot papers, stamping instruments \* \* and other things, appoint and pay such officers, and do such other acts and things as may be necessary for effectually conducting an election in manner provided by this Act.

9. *Keeping of order in station.*] If any person misconducts himself in the polling station or fails to obey the lawful orders of the presiding officer, he may immediately, by order of the presiding officer, be removed from the polling station by any constable in or near that station, or any other person authorized in writing by the returning officer to remove him; and the person so removed shall not, unless with the permission of the presiding officer, again be allowed to enter the polling station during the day.

Any person so removed as aforesaid, if charged with the commission in such station of any offence, may be kept in custody until he can be brought before a justice of the peace.

Provided that the powers conferred by this section shall not be exercised so as to prevent any elector who is otherwise entitled to vote at any polling station from having an opportunity of voting at such station.

10. *Powers of presiding officer and administration of oaths, &c.*] For the purpose of the adjournment of the poll, and of every other enactment relating to the poll, a presiding officer shall have the power by law belonging to a deputy returning officer; and any presiding officer and any clerk appointed by the returning officer to attend at a polling station shall have the power of asking the questions and administering the oath authorized by law to be asked of and administered to voters, and any justice of the peace and any returning officer may take and receive any declaration authorized by this Act to be taken before him.

11. *Liability of officers for misconduct.*] Every returning officer, presiding officer, and clerk who is guilty of any wilful misfeasance or any wilful act or omission in contravention of this Act shall, in addition to any other penalty or liability to which he may be subject, forfeit to any person aggrieved by such misfeasance, act, or omission, a penal sum not exceeding one hundred pounds.

Section fifty of the "Representation of the People Act, 1867" (d) (which relates to the acting of any returning officer, or his partner or clerk, as agent for a candidate), shall apply to any returning officer appointed by him in pursuance of this Act, and to his partner or clerk.

(c) Vide sect. 20, sub-sect. 3, *post*.

(d) 30 & 31 Vict. c. 102, s. 50, enacts that "No returning officer for any county or borough or his deputy, nor any partner or clerk of either shall act as agent for any candidate in the management or conduct of his election as a member to serve in parliament for such county or borough; and if any returning officer, his deputy, the partner or clerk of either of them shall so act he shall be guilty of a misdemeanor." Vide sect. 20 of this (Ballot) Act, *post*.

12. *Prohibition of disclosure of vote.*] No person who has voted at an election shall, in any legal proceeding to question the election or return, be required to state for whom he has voted.

13. *Non-compliance with rules.*] No election shall be declared invalid by reason of a non-compliance with the rules contained in the first schedule to this Act, or any mistake in the use of the forms in the second schedule to this Act, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in the body of this Act, and that such non-compliance or mistake did not affect the result of the election.

14. *Use of municipal ballot boxes, &c., for parliamentary election, and vice versâ.*] Where a parliamentary borough and municipal borough occupy the whole or any part of the same area, any ballot boxes or fittings for polling stations and compartments provided for such parliamentary borough or such municipal borough may be used in any municipal or parliamentary election in such borough free of charge, and any damage other than reasonable wear and tear caused to the same shall be paid as part of the expenses of the election at which they are so used.

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## PART II.

### *Municipal Elections.*

20. *Application to municipal election of enactments relating to the poll at parliamentary elections.*] The poll at every contested municipal election (a) shall, so far as circumstances admit, be conducted in the manner in which the poll is by this Act directed to be conducted at a contested parliamentary election, and, subject to the modifications expressed in the schedules annexed hereto, such provisions of this Act and of the said schedules as relate to or are concerned with a poll at a parliamentary election shall apply to a poll at a contested municipal election: provided as follows:—

- (1.) The term “returning officer” shall mean the mayor or other officer who, under the law relating to municipal elections, presides at such elections:
- (2.) The term “petition questioning the election or return” shall mean any proceeding in which a municipal election can be questioned:
- (3.) The mayor shall provide everything which in the case of a parliamentary election is required to be provided by the returning officer for the purpose of a poll:
- (4.) All expenses shall be defrayed in manner provided by law with respect to the expenses of a municipal election:

\* \* \* \*

- (6.) Nothing in this Act shall be deemed to authorize the appointment of any agents of a candidate in a municipal election, but if in the case of a municipal election any agent of a candidate is appointed and a notice in writing of such appointment is given to the returning officer, the provisions of this Act with respect to agents of candidates shall, so far as respects such agent, apply in the case of that election:

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(a) At an election of councillors, auditors or assessors, the power and duty of the mayor under this section is to extend (save as to the appointment of the alderman as returning officer for any ward) to the appointment of officers for taking the poll, and counting the votes. 38 & 39 Vict. c. 40, s. 3, *post*, p. ccxciv.

A municipal election shall, except in so far as relates to the taking of the poll in the event of its being contested, be conducted in the manner in which it would have been conducted if this Act had not passed.

21. *Abolition of ward assessors.*] Assessors shall not be elected in any ward of any municipal borough, and a municipal election need not be held before the assessors or their deputies, but may be held before the mayor, alderman, or other returning officer only.

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### PART III.

#### *Personation.*

24. *Definition and punishment of personation.*] The following enactments shall be made with respect to personation at \* municipal elections :

A person shall for all purposes of the laws relating to \* municipal elections be deemed to be guilty of the offence of personation who \* \* at a municipal election applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead or of a fictitious person, or who having voted once at any such election applies at the same election for a ballot paper in his own name.

The offence of personation, or of aiding, abetting, counselling, or procuring the commission of the offence of personation by any person, shall be a felony, and any person convicted thereof shall be punished by imprisonment for a term not exceeding two years, together with hard labour. It shall be the duty of the returning officer to institute a prosecution against any person whom he may believe to have been guilty of personation, or of aiding, abetting, counselling, or procuring the commission of the offence of personation by any person, at the election for which he is returning officer, and the costs and expenses of the prosecutor and the witnesses in such case, together with compensation for their trouble and loss of time, shall be allowed by the court in the same manner in which courts are empowered to allow the same in cases of felony.

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### PART IV.

#### *Miscellaneous.*

28. *Effect of schedules.*] The schedules to this Act, and the notes thereto, and directions therein, shall be construed and have effect as part of this Act.

29. *Definitions of terms.*] In this Act—

The expression “municipal borough” means any place for the time being subject to the Municipal Corporation Acts, or any of them :

The expression “Municipal Corporation Acts” means—

- (a.) \* \* the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled *An Act to provide for the regulation of municipal corporations in England and Wales*, and the Acts amending the same :

\* \* \* \* \*

The expression “municipal election” means—

- (a.) \* \* an election of any person to serve the office of councillor, auditor, or assessor of any municipal borough, or of councillor for a ward of a municipal borough.

30. *Application of Act.*] This Act shall apply to any \* municipal election which may be held after the passing thereof.

32. *Repeal of Acts in schedules.*] The Acts specified in the fourth \* \* schedule to this Act, to the extent specified in the third column of that schedule, and all other enactments inconsistent with this Act, are hereby repealed.

Provided that this appeal shall not affect—

- (a.) Anything duly done or suffered under any enactment hereby repealed; or
- (b.) Any right or liability acquired, accrued, or incurred under any enactment hereby repealed; or
- (c.) Any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed; or
- (d.) Any investigation, legal proceeding, or remedy in respect of any such right, liability, penalty, forfeiture, or punishment as aforesaid; and any such investigation, legal proceeding, and remedy may be carried on as if this Act had not passed.

33. *Short title.*] This Act may be cited as the Ballot Act, 1872, and shall continue in force till the thirty-first day of December one thousand eight hundred and eighty, and no longer, unless parliament shall otherwise determine; and on the said day the Acts in the fourth \* \* schedule shall be thereupon revived; provided that such revival shall not affect any act done, any acts acquired, any liability or penalty incurred, or any proceeding pending under this Act, but such proceeding shall be carried on as if this Act had continued in force.

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## SCHEDULES.

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### FIRST SCHEDULE.

#### PART I.

##### *Rules for Parliamentary Elections.*

1. *Election.*] The returning officer shall, in the case of a county election, within two days after the day on which he receives the writ, and in the case of a borough election, on the day on which he receives the writ, or the following day, give public notice, between the hours of nine in the morning and four in the afternoon, of the day on which and the place at which he will proceed to an election, and of the time appointed for the election, and of the day on which the poll will be taken in case the election is contested, and of the time and place at which forms of nomination papers may be obtained, and in the case of a county election shall send one of such notices by post, under cover, to the postmaster of the principal post-office of each polling place in the county, endorsed with the words "Notice of election," and the same shall be forwarded free of charge; and the postmaster receiving the same shall forthwith publish the same in the manner in which post-office notices are usually published.

2. The day of election shall be fixed by the returning officer as follows: that is to say \* \* \* in the case of an election for any borough other than a district borough, not later than the fourth day after the day on which he receives the writ, with an interval of not less than two clear days between the day on which he gives the notice and the day of election (a).

3. The place of election shall be a convenient room situate in the town in which such election would have been held if this Act had not passed \* \* \*.

4. The time appointed for the election shall be such two hours between the hours of ten in the forenoon and three in the afternoon as may be appointed by the returning officer, and the returning officer shall attend during those two hours and for one hour after.

5. Each candidate shall be nominated by a separate nomination paper, but the same electors, or any of them, may subscribe as many nomination papers as there are vacancies to be filled, but no more.

6. Each candidate shall be described in the nomination paper in such manner as, in the opinion of the returning officer, is calculated to sufficiently identify such candidate; the description shall include his names, his abode, and his rank, profession, or calling, and his surname shall come first in the list of his names. No objection to a nomination paper on the ground of the description of the candidate therein being insufficient, or not being in compliance with this rule, shall be allowed or deemed valid, unless such objection is made by the returning officer, or by some other person, at or immediately after the time of the delivery of the nomination paper.

7. The returning officer shall supply a form of nomination paper to any registered elector requiring the same during such two hours as the returning officer may fix, between the hours of ten in the morning and two in the afternoon on each day intervening between the day on which notice of the election was given and the day of election, and during the time appointed for the election; but nothing in this Act shall render obligatory the use of a nomination paper supplied by the returning officer, so, however, that the paper be in the form prescribed by this Act.

8. The nomination papers shall be delivered to the returning officer at the place of election during the time appointed for the election; and the candidate nominated by each nomination paper, and his proposer and seconder, and one other person selected by the candidate, and no person other than aforesaid, shall, except for the purpose of assisting the returning officer, be entitled to attend the proceedings during the time appointed for the election.

9. If the election is contested the returning officer shall, as soon as practicable after adjourning the election, give public notice of the day on which the poll will be taken, and of the candidates described as in their respective nomination papers, and of the names of the persons who subscribe the nomination paper of each candidate, and of the order in which the names of the candidates will be printed in the ballot paper \* \* \*.

10. If any candidate nominated during the time appointed for the election is withdrawn in pursuance of this Act, the returning officer shall give public notice of the name of such candidate, and the names of the persons who subscribed the nomination paper of such candidate, as well as of the candidates who stood nominated or were elected.

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(a) See sect. 64, sub-sect. (c), *post*, p. ccxxy.

11. The returning officer shall, on the nomination paper being delivered to him, forthwith publish notice of the name of the person nominated as a candidate, and of the names of his proposer and seconder, by placarding or causing to be placarded the names of the candidate and his proposer and seconder in a conspicuous position outside the building in which the room is situate appointed for the election.

12. A person shall not be entitled to have his name inserted in any ballot paper as a candidate unless he has been nominated in manner provided by this Act, and every person whose nomination paper has been delivered to the returning officer during the time appointed for the election shall be deemed to have been nominated in manner provided by this Act, unless objection be made to his nomination paper by the returning officer or some other person before the expiration of the time appointed for the election or within one hour afterwards.

13. The returning officer shall decide on the validity of every objection made to a nomination paper, and his decision, if disallowing the objection, shall be final; but if allowing the same, shall be subject to reversal on petition questioning the election or return.

#### *The Poll.*

\* \* \* \* \*

15. At every polling place the returning officer shall provide a sufficient number of polling stations for the accommodation of the electors entitled to vote at such polling place, and shall distribute the polling stations amongst those electors in such manner as he thinks most convenient  
\* \* \*

16. Each polling station shall be furnished with such number of compartments, in which the voters can mark their votes screened from observation, as the returning officer thinks necessary, so that at least one compartment be provided for every one hundred and fifty electors entitled to vote at such polling station (a).

17. A separate room or separate booth may contain a separate polling station, or several polling stations may be constructed in the same room or booth.

18. No person shall be admitted to vote at any polling station except the one allotted to him.

19. The returning officer shall give public notice of the situation of polling stations and the description of voters entitled to vote at each station, and of the mode in which electors are to vote (a).

20. The returning officer shall provide each polling station with materials for voters to mark the ballot papers, with instruments for stamping thereon the official mark, and with copies of the register of voters, or such part thereof as contains the names of the voters allotted to vote at such station. He shall keep the official mark secret, and an interval of not less than seven years shall intervene between the use of the same official mark at elections for the same \* borough.

21. The returning officer shall appoint a presiding officer to preside at each station, and the officer so appointed shall keep order at his station,

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(a) The provisions contained in this rule are not to apply to any election of councillors, auditors or assessors (38 & 39 Vict. c. 40, s. 4); other provisions are thereby substituted: Vide *post*, p. ccxciii.

shall regulate the number of electors to be admitted at a time, and shall exclude all other persons except the clerks, the agents of the candidates, and the constables on duty.

22. Every ballot paper shall contain a list of the candidates described as in their respective nomination papers, and arranged alphabetically in the order of their surnames, and (if there are two or more candidates with the same surname) of their other names: it shall be in the form set forth in the second schedule to this Act or as near thereto as circumstances admit, and shall be capable of being folded up.

23. Every ballot box shall be so constructed that the ballot papers can be introduced therein, but cannot be withdrawn therefrom, without the box being unlocked. The presiding officer at any polling station, just before the commencement of the poll, shall show the ballot box empty to such persons, if any, as may be present in such station, so that they may see that it is empty, and shall then lock it up, and place his seal upon it in such manner as to prevent its being opened without breaking such seal, and shall place it in his view for the receipt of ballot papers, and keep it so locked and sealed.

24. Immediately before a ballot paper is delivered to an elector, it shall be marked on both sides with the official mark, either stamped or perforated, and the number, name, and description of the elector as stated in the copy of the register (a) shall be called out, and the number of such elector shall be marked on the counterfoil, and a mark shall be placed in the register (a) against the number of the elector, to denote that he has received a ballot paper, but without showing the particular ballot paper which he has received.

25. The elector, on receiving the ballot paper, shall forthwith proceed into one of the compartments in the polling station, and there mark his paper, and fold it up so as to conceal his vote, and shall then put his ballot paper, so folded up, into the ballot box; he shall vote without undue delay, and shall quit the polling station as soon as he has put his ballot paper into the ballot box.

26. The presiding officer, on the application of any voter who is incapacitated by blindness or other physical cause from voting in manner prescribed by this Act, or (if the poll be taken on Saturday) of any voter who declares that he is of the Jewish persuasion, and objects on religious grounds to vote in manner prescribed by this Act, or of any voter who makes such a declaration as hereinafter mentioned that he is unable to read, shall, in the presence of the agents of the candidates, cause the vote of such voter to be marked on a ballot paper in manner directed by such voter, and the ballot paper to be placed in the ballot box, and the name and number on the register of voters (a) of every voter whose vote is marked in pursuance of this rule, and the reason why it is so marked, shall be entered on a list in this Act called "the list of votes marked by the presiding officer."

The said declaration, in this Act referred to as "the declaration of inability to read," shall be made by the voter at the time of polling, before the presiding officer, who shall attest it in the form hereinafter mentioned,

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(a) Vide sect. 64, sub-sect. (a).

and no fee, stamp, or other payment shall be charged in respect of such declaration, and the said declaration shall be given to the presiding officer at the time of voting.

27. If a person, representing himself to be a particular elector named on the register (*a*) applies for a ballot paper after another person has voted as such elector, the applicant shall, upon duly answering the questions and taking the oath permitted by law to be asked of and to be administered to voters at the time of polling, be entitled to mark a ballot paper in the same manner as any other voter, but the ballot paper (in this Act called a tendered ballot paper) shall be of a colour differing from the other ballot papers, and, instead of being put into the ballot box, shall be given to the presiding officer and endorsed by him with the name of the voter and his number in the register of voters, and set aside in a separate packet, and shall not be counted by the returning officer. And the name of the voter and his number on the register (*a*) shall be entered on a list, in this Act called the tendered voters list.

28. A voter who has inadvertently dealt with his ballot paper in such manner that it cannot be conveniently used as a ballot paper, may, on delivering to the presiding officer the ballot paper so inadvertently dealt with, and proving the fact of the inadvertence to the satisfaction of the presiding officer, obtain another ballot paper in the place of the ballot paper so delivered up (in this Act called a spoilt ballot paper), and the spoilt ballot paper shall be immediately cancelled.

29. The presiding officer of each station, as soon as practicable after the close of the poll, shall, in the presence of the agents of the candidates, make up into separate packets sealed with his own seal and the seals of such agents of the candidates as desire to affix their seals,—

- (1). Each ballot box in use at his station, unopened but with the key attached ; and
  - (2). The unused and spoilt ballot papers, placed together ; and
  - (3). The tendered ballot papers ; and
  - (4). The marked copies of the registry of voters (*a*), and the counter-foils of the ballot papers ; and
  - (5). The tendered votes list, and the list of votes marked by the presiding officer, and a statement of the number of the voters whose votes are so marked by the presiding officer under the heads “physical incapacity,” “Jews,” and “unable to read,” and the declarations of inability to read ;
- and shall deliver such packets to the returning officer.

30. The packets shall be accompanied by a statement made by such presiding officer, showing the number of ballot papers entrusted to him, and accounting for them under the heads of ballot papers in the ballot box, unused, spoilt, and tendered ballot papers, which statement is in this Act referred to as the ballot paper account.

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(*a*) Vide sect. 64, sub-sect. (*a*)



*Counting votes.*

31. The candidates may respectively appoint agents to attend the counting of the votes (b).

32. The returning officer shall make arrangements for counting the votes in the presence of the agents of the candidates as soon as practicable after the close of the poll, and shall give to the agents of the candidates appointed to attend at the counting of the votes notice in writing of the time and place at which he will begin to count the same.

33. The returning officer, his assistants and clerks, and the agents of the candidates, and no other person, except with the sanction of the returning officer, may be present at the counting of the votes.

34. Before the returning officer proceeds to count the votes, he shall, in the presence of the agents of the candidates, open each ballot box, and, taking out the papers therein, shall count and record the number thereof, and then mix together the whole of the ballot papers contained in the ballot boxes. The returning officer, while counting and recording the number of ballot papers and counting the votes, shall keep the ballot papers with their faces upward, and take all proper precautions for preventing any person from seeing the numbers printed on the backs of such papers.

35. The returning officer shall, so far as practicable, proceed continuously with counting the votes, allowing only time for refreshment, and excluding (except so far as he and the agents otherwise agree) the hours between seven o'clock at night and nine o'clock on the succeeding morning. During the excluded time the returning officer shall place the ballot papers and other documents relating to the election under his own seal and the seals of such of the agents of the candidates as desire to affix their seals, and shall otherwise take proper precautions for the security of such papers and documents.

36. The returning officer shall endorse "rejected" on any ballot paper which he may reject as invalid, and shall add to the endorsement "rejection objected to," if an objection be in fact made by any agent to his decision. The returning officer shall report to the *town clerk* (c) the number of ballot papers rejected and not counted by him under the several heads of—

1. Want of official mark;
2. Voting for more candidates than entitled to;
3. Writing or mark by which voter could be identified;
4. Unmarked or void for uncertainty;

and shall on request allow any agents of the candidates, before such report is sent, to copy it.

37. Upon the completion of the counting, the returning officer shall seal up in separate packets the counted and rejected ballot papers. He shall

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(b) Vide sect. 20, sub-sect. 6, *ante*.

(c) In parliamentary elections, "to the Clerk of the Crown in Chancery." Vide Part II. sect. 64, sub-sect. (b).

not open the sealed packet of tendered ballot papers or marked copy of the register of voters (a) and counterfoils, but shall proceed, in the presence of the agents of the candidates, to verify the ballot paper account given by each presiding officer by comparing it with the number of ballot papers recorded by him as aforesaid, and the unused and spoilt ballot papers in his possession and the tendered votes list, and shall reseal each sealed packet after examination. The returning officer shall report to *the town clerk (b)* the result of such verification, and shall, on request, allow any agents of the candidates, before such report is sent, to copy it.

38. Lastly, the returning officer shall forward to *the town clerk (b)* (in manner in which the poll books are by any existing enactment required to be forwarded to such clerk, or as near thereto as circumstances admit) all the packets of ballot papers in his possession, together with the said reports, the ballot paper accounts, tendered votes lists, lists of votes marked by the presiding officer, statements relating thereto, declarations of inability to read, and packets of counterfoils, and marked copies of registers (a), sent by each presiding officer, endorsing on each packet a description of its contents and the date of the election to which they relate, and the name of the \* borough for which such election was held; and the term poll book in any such enactment shall be construed to include any document forwarded in pursuance of this rule.

39. *The town clerk (b)* shall retain for a year all documents relating to an election forwarded to him in pursuance of this Act by a returning officer, and then, unless otherwise directed by an order of *the council of the borough (c)* shall cause them to be destroyed.

40. No person shall be allowed to inspect any rejected ballot papers in the custody of *the town clerk (b)*, except under the order of *the county court having jurisdiction in the borough or any part thereof, or of any tribunal in which a municipal tribunal is questioned (d)*, to be granted by such court on being satisfied by evidence on oath that the inspection or production of such ballot papers is required for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers, or for the purpose of a petition questioning an election or return; and any such order for the inspection or production of ballot papers may be made subject to such conditions as to persons, time, place, and mode of inspection or production as the \* court making the same may think expedient, and shall be obeyed by *the town clerk (b)* \* \* \*.

41. No person shall, except by order of *the said county court (d)*, or any tribunal having cognizance of petitions complaining of undue returns or undue elections, open the sealed packet of counterfoils after the same has been once sealed up, or be allowed to inspect any counted ballot papers in the custody of *the town clerk (b)*; such order may be made subject to such conditions as to persons, time, place, and mode of opening or inspection as the *court (d)* or tribunal making the order may think expedient; provided that on making and carrying into effect any such order, care shall

(a) Vide Part II. sect. 64 sub-sect. (a).

(b) Vide note (c) to sect. 36.

(c) In parliamentary elections, "of the House of Commons, or of one of Her Majesty's superior courts."—Vide Part II. sect. 64 sub-sect. (b) *bis*.

(d) In parliamentary elections, "of the House of Commons, or of one of Her Majesty's superior courts."—Vide Part II. sect. 64 sub-sect. (a) *bis*.

be taken that the mode in which any particular elector has voted shall not be discovered until he has been proved to have voted, and his vote has been declared by a competent court to be invalid.

42. All documents forwarded by a returning officer in pursuance of this Act to the *town clerk* (e), other than ballot papers and counterfoils, shall be open to public inspection at such time and under such regulations as may be prescribed by the *council of the borough with the consent of one of Her Majesty's principal secretaries of state* (f), and the *town clerk* (e) shall supply copies of or extracts from the said documents to any person demanding the same, on payment of such fees and subject to such regulations as may be sanctioned by the Treasury.

43. Where an order is made for the production by the *town clerk* (e) of any document in his possession relating to any specified election, the production by such clerk or his agent of the document ordered, in such manner as may be directed by such order, or by a rule of the court having power to make such order, shall be conclusive evidence that such document relates to the specified election; and any endorsement appearing on any packet of ballot papers produced by such clerk or his agent shall be evidence of such papers being what they are stated to be by the endorsement. The production from proper custody of a ballot paper purporting to have been used at any election, and of a counterfoil marked with the same printed number and having a number marked thereon in writing, shall be *prima facie* evidence that the person who voted by such ballot paper was the person who at the time of such election had affixed to his name in the register of voters at such election the same number as the number written on such counterfoil.

#### *General provisions.*

45. The returning officer shall, as soon as possible, give public notice of the names of the candidates elected, and, in the case of a contested election of the total number of votes given for each candidate, whether elected or not.

46. Where the returning officer is required or authorized by this Act to give any public notice, he shall carry such requirement into effect by advertisements, placards, handbills, or such other means as he thinks best calculated to afford information to the electors.

47. The returning officer may, if he think fit, preside at any polling station, and the provisions of this Act relating to a presiding officer shall apply to such returning officer with the necessary modifications as to things to be done by the returning officer to the presiding officer, or the presiding officer to the returning officer.

48. In the case of a contested election \* \* the returning officer may, in addition to any clerks, appoint competent persons to assist him in counting the votes.

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(e) Vide note (c) to sect. 36.

(f) In parliamentary elections the regulations "may be prescribed by the Clerk of the Crown in Chancery with the consent of the Speaker of the House of Commons." Vide Part. II. sect. 64 (b) *bis*.

49. No person shall be appointed by a returning officer for the purposes of an election who has been employed by any other person in or about the election.

50. The presiding officer may do, by the clerks appointed to assist him, any act which he is required or authorized to do by this Act at a polling station except ordering the arrest, exclusion, or ejection from the polling station of any person.

51. A candidate may himself undertake the duties which any agent of his if appointed might have undertaken, or may assist his agent in the performance of such duties, and may be present at any place at which his agent may, in pursuance of this Act, attend.

52. The name and address of every agent of a candidate appointed to attend the counting of the votes shall be transmitted to the returning officer one clear day at the least before the opening of the poll; and the returning officer may refuse to admit to the place where the votes are counted any agent whose name and address has not been so transmitted, notwithstanding that his appointment may be otherwise valid, and any notice required to be given to an agent by the returning officer may be delivered at or sent by post to such address.

53. If any person appointed an agent by a candidate for the purposes of attending at the polling station or at the counting of the votes dies, or becomes incapable of acting during the time of the election, the candidate may appoint another agent in his place, and shall forthwith give to the returning officer notice in writing of the name and address of the agent so appointed.

54. Every returning officer, and every officer, clerk, or agent authorized to attend at a polling station, or at the counting of the votes, shall, before the opening of the poll, make a statutory declaration of secrecy, in the presence, if he is the returning officer, of a justice of the peace, and if he is any other officer or an agent, of a justice of the peace or of the returning officer; but no such returning officer, officer, clerk, or agent as aforesaid shall, save as aforesaid, be required, as such, to make any declaration or take any oath on the occasion of any election.

55. Where in this Act any expressions are used requiring or authorizing or inferring that any act or thing is to be done in the presence of the agents of the candidates, such expressions shall be deemed to refer to the presence of such agents of the candidates as may be authorized to attend, and as have in fact attended, at the time and place where such act or thing is being done, and the non-attendance of any agents or agent at such time and place shall not, if such act or thing be otherwise duly done, in anywise invalidate the act or thing done.

56. In reckoning time for the purposes of this Act, Sunday, Christmas day, Good Friday, and any day set apart for a public fast or public thanksgiving, shall be excluded; and where anything is required by this Act to be done on any day which falls on the above-mentioned days such thing may be done on the next day, unless it is one of the days excluded as above mentioned.

57. In this Act—

\* \* \* \* \*

The expression "polling place" means, in the case of a borough, such borough or any part thereof in which a separate booth is required or authorized by law to be provided; and

The expression "agents of the candidates," used in relation to a polling station, means agents appointed in pursuance of section eighty-five of the Act of the session of the sixth and seventh years of the reign of Her present Majesty, chapter eighteen (a).

\* \* \* \* \*

## PART II.

### *Rules for Municipal Elections.*

64. In the application of the provisions of this schedule to municipal elections the following modifications shall be made:—

(a). The expression "register of voters" means the burgess roll of the burgesses of the borough, or, in the case of an election for the ward of a borough, the ward list; and the mayor shall provide true copies of such register for each polling station:

(b). All ballot papers and other documents which, in the case of a parliamentary election, are forwarded to the clerk of the Crown in Chancery shall be delivered to the town clerk of the municipal borough in which the election is held, and shall be kept by him among the records of the borough; and the provisions of Part I. of this schedule with respect to the inspection, production, and destruction of such ballot papers and documents, and to the copies of such documents, shall apply respectively to the ballot papers and documents so in the custody of the town clerk, with these modifications; namely,—

(a.) An order of the county court having jurisdiction in the borough, or any part thereof, or of any tribunal in which a municipal election is questioned, shall be substituted for an order of the House of Commons, or of one of Her Majesty's superior courts; but an appeal from such county court may be had in like manner as in other cases in such county court:

(b). The regulations for the inspection of documents and the fees for the supply of copies of documents of which copies are directed to be supplied, shall be prescribed by the council of the borough with the consent of one of Her Majesty's principal secretaries of state; and, subject as aforesaid, the town clerk, in respect of the custody and destruction of the ballot papers and other documents coming into his possession in pursuance of this Act, shall be subject to the directions of the council of the borough:

(c). Nothing in this schedule with respect to the day of the poll shall apply to a municipal election.

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(a) "And for the more effectual detection of the personation of voters at elections, be it enacted, that it shall be lawful for any candidate, at any election of a member or members to serve in parliament for any county, city, or borough, previous to the time fixed for taking the poll at such election, to nominate and appoint an agent or agents on his behalf to attend at each or any of the booths appointed for taking the poll at such election, for the purpose of detecting personation; and such candidate shall give notice in writing to the returning officer, or his respective deputy, of the name and address of the person or persons so appointed by him to act as agents for such purpose; and thereupon it shall be lawful for every such agent to attend during the time of polling at the booth or booths for which he shall have been so appointed."

## SECOND SCHEDULE.

*Note.*—The forms contained in this schedule, or forms as nearly resembling the same as circumstances will admit, shall be used in all cases to which they refer and are applicable, and when so used shall be sufficient in law.

\* \* \* \* \*

*Form of Nomination Paper in Parliamentary Election (a.)*

We, the undersigned *A. B.* of — in the — of — and *C. D.* of —, in the — of —, being electors for the — of —, do hereby nominate the following person as a proper person to serve as *member* for the said — in parliament :

Surname.	Other Names.	Abode.	Rank, Profession, or Occupation.
BROWN	JOHN	52, George Street, Bristol.	Merchant.
SMITH	<sup>or</sup> HENRY SYDNEY	72, High Street, Bath.	Attorney.

(Signed) *A.B.*  
*C.D.*

We, the undersigned, being *registered electors* of the —, do hereby assent to the nomination of the above-mentioned *John Brown* as a proper person to serve as *member* for the said — in parliament.

(Signed) *E.F.* of  
*G.H.* of  
*I.J.* of  
*K.L.* of  
*M.N.* of  
*O.P.* of  
*Q.R.* of  
*S.T.* of

*Form of Nomination Paper in Municipal Election.*

*Note.*—The form of nomination paper in a municipal election shall, as nearly as circumstances admit, be the same as in the case of a parliamentary election.

(a) The form of nomination papers at municipal elections is repealed by 38 & 39 Vict., c. 40, s. 12, Sched. 2, and another form is given by Sched. 1, No. 2, *post*, p. ccxvii. See sec. 1, sub-sect 4, *post*, p. ccxiv.

*Form of Front of Ballot Paper (a).*

Counterfoil No.	1	BROWN	
NOTE: <i>The counterfoil is to have a number to correspond with that on the back of the Ballot Paper.</i>		(John Brown, of 52, George Street, Bristol merchant.)	
	2	SMITH  (Henry Sydney Smith, of 72, High St., Bath, attorney.)	

*Form of Back of Ballot Paper.*

No.

Election for ——— ward

18 .

*Note.*—The number on the ballot paper is to correspond with that in the counterfoil.

*Directions as to printing Ballot Paper.*

Nothing is to be printed on the ballot paper except in accordance with this schedule.

The surname of each candidate, and if there are two or more candidates of the same surname, also the other names of such candidates, shall be printed in large characters, as shown in the form, and the names, addresses, and descriptions, and the number on the back of the paper, shall be printed in small characters.

*Form of directions for the guidance of the voter in voting, which shall be printed in conspicuous characters, and placarded outside every polling station and in every compartment of every polling station.*

The voter may vote for ——— candidate .

The voter will go into one of the compartments, and, with the pencil provided in the compartment, place a cross on the right hand side, opposite the name of each candidate for whom he votes, thus X

The voter will then fold up the ballot paper so as to show the official mark on the back, and leaving the compartment will, without showing the front of the paper to any person, show the official mark on the back to the presiding officer, and then, in the presence of the presiding officer, put the paper into the ballot box, and forthwith quit the polling station.

If the voter inadvertently spoils a ballot paper, he can return it to the officer, who will, if satisfied of such inadvertence, give him another paper.

(a) As to ballot papers at elections of auditors and assessors, see 38 & 39 Vict. c. 40, s. 6, and sched. 1. Form No. 3, *post*, pp. ccxcv., ccxcviii.

If the voter votes for more than — candidate, or places any mark on the paper by which he may be afterwards identified, his ballot paper will be void, and will not be counted.

If the voter takes a ballot paper out of the polling station, or deposits in the ballot box any other paper than the one given him by the officer, he will be guilty of a misdemeanor, and be subject to imprisonment for any term not exceeding six months, with or without hard labour.

*Note.*—These directions shall be illustrated by examples of the ballot paper.

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*Form of Statutory Declaration of Secrecy.*

I solemnly promise and declare, that I will not at this election for — do anything forbidden by section four of the Ballot Act, 1872, which has been read to me.

*Note.*—The section must be read to the declarant by the person taking the declaration.

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*Form of declaration of inability to read.*

I, *A. B.*, of —, being numbered — on the *burgess roll* for the borough of —, do hereby declare that I am unable to read.

*A. B.* his mark.

— day of —.

I, the undersigned, being the presiding officer for the — polling station for the borough of —, do hereby certify, that the above declaration, having been first read to the above-named *A. B.*, was signed by him in my presence with his mark.

Signed, *C. D.*,  
Presiding officer for — polling station  
for the borough of — day of —.

\* \* \* \* \*

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35 & 36 VICT. CAP. LX.

An Act for the better prevention of Corrupt Practices at Municipal Elections, and for establishing a Tribunal for the trial of the validity of such Elections.  
[6th August, 1872.]

WHEREAS it is expedient to make provision for the better prevention of corrupt practices at municipal elections, and for establishing a tribunal for the trial of the validity of such elections :

Be it enacted, &c.



1. *Short title.*] This Act may be cited for all purposes as the "Corrupt Practices (Municipal Elections) Act, 1872."

2. *Definitions.*] In this Act, except where the context otherwise requires, the following words and expressions shall respectively be construed as follows, viz. :—

- (1). "Borough" means a place for the time being subject to the provisions of the Act of the fifth and sixth of William the Fourth, chapter seventy-six, intituled *An Act to provide for the regulation of municipal corporations in England and Wales*, as amended by the Acts amending the said Act :
  - "Office" means the office of mayor, alderman, councillor, auditor, or assessor, of a borough or ward of a borough :
  - "Election" means an election to an office :
  - "Candidate" means a person elected, or who has been nominated or has declared himself a candidate for election to an office ;
  - "Canvasser" means any person who solicits or persuades, or attempts to persuade, any person to vote or to abstain from voting at an election, or to vote or to abstain from voting for any candidate at an election :
  - "Register" includes a burgess roll or ward list :
  - "Voter" means a person included in a register or who voted or claimed to vote at an election :
  - "Returning officer" means a person, under whatever designation, presiding at an election :
  - "Election court" means an election court constituted and acting under the provisions of this Act for the trial of a petition respecting an election :
  - "Superior court" means the Court of Common Pleas at Westminster :
  - "Prescribed" means prescribed by general rules to be made under the provisions of this Act.
- (2). This Act shall, so far as is consistent with the tenor thereof be construed as one with the Acts for the time being in force relating to boroughs and to elections in boroughs.

## PART I.

### *Corrupt Practices at Municipal Elections.*

3. *As to corrupt practices at municipal elections.*] The offences of bribery, treating, undue influence, and personation, shall be deemed to be corrupt practices at an election for the purposes of this Act.

The terms "bribery," "treating," "undue influence," and "personation," shall respectively include anything committed or done before, at, after, or with respect to an election, which if done before, at, after, or with respect to an election of members to serve in parliament would render the person committing or doing the same liable to any penalties, punishments, or disqualifications, for bribery, treating, undue influence, or personation, as the case may be, under any Act for the time being in force with respect to elections of members to serve in parliament (a).

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(a) See 17 & 18 Vict. c. 102 ; 21 & 22 Vict. c. 87, and 26 & 27 Vict. c. 29.

Any person who is guilty of a corrupt practice at an election shall be liable to the like actions, prosecutions, penalties, forfeitures, and punishments, as if the corrupt practice had been committed at an election of members to serve in parliament (a).

4. *Disqualifications of candidates personally guilty of corrupt practices.*] Where it is found by the report of an election court acting under the provisions of this Act that any corrupt practice has been committed by or with the knowledge and consent of any candidate at an election, such candidate shall be deemed to have been personally guilty of corrupt practices at the election, and his election, if he has been elected, shall be void, and he shall (whether he was elected or not) during seven years from the date of the report be subject to the following disqualifications; viz.,—

- (1). He shall be incapable of holding or exercising any municipal office or franchise, and of having his name placed on the register, or voting at any municipal election:
- (2). He shall be incapable of acting as a justice of the peace and of holding any judicial office:
- (3). He shall be incapable of being elected to and of sitting or voting in parliament:
- (4). He shall be incapable of being registered or voting as a parliamentary voter:
- (5). He shall be incapable of being employed by any candidate in any parliamentary or municipal election:
- (6). He shall be incapable of acting as overseer or as guardian of the poor.

If any person is upon an indictment or information found guilty of any corrupt practice at an election, or is in any action or proceeding adjudged to pay a penalty or forfeiture for any corrupt practice at an election, he shall, whether he was a candidate at the election or not, be subject during seven years from the date of the conviction or judgment to all the disqualifications mentioned in this section.

If at any time after any person has become disqualified by virtue of this Act, the witnesses, or any of them, on whose testimony such person has so become disqualified, are upon the prosecution of such person convicted of perjury in respect of such testimony, it shall be lawful for such person to move the superior court to order, and the superior court shall, upon being satisfied that such disqualification was procured by reason of perjury, order that such disqualification shall thenceforth cease and determine, and the same shall cease and determine accordingly.

5. *Avoidance of election for corrupt practices by agents, and for offences against this Act.*] If it is found by an election court acting under the provisions of this Act, that a candidate has by an agent been guilty of any corrupt practice at an election, or that any act hereinafter in this Act declared to be an offence against this Act has been committed at an election by a candidate or by an agent for a candidate with the candidate's knowledge and consent, the candidate shall, during the period for which he was elected to serve, or for which, if elected, he might have served, be dis-

qualified for being elected to and for holding any municipal office in the borough for which the election was held, and if he was elected his election shall be void.

6. *Avoidance of election on the ground of general corruption, &c.]* An election for a borough or a ward thereof shall be wholly avoided by such general corruption, bribery, treating, or intimidation at the election for such borough or ward as would by the common law of parliament avoid an election of members to serve in parliament for a parliamentary borough.

7. *Prohibition of paid canvassers (from voting)(b).]* No person who is included in a register for a borough or ward thereof as a burgess or citizen shall be retained or employed for payment or reward by or on behalf of a candidate at an election for such borough or any ward thereof as a canvasser for the purposes of the election.

If any person is retained or employed by or on behalf of a candidate at an election in contravention of this prohibition, such person and also the candidate or other person by whom he is retained or employed shall be deemed to be guilty of an offence against this Act, and shall be liable on summary conviction before two justices of the peace to a penalty not exceeding ten pounds.

An agent or canvasser who is retained or employed for payment or reward for any of the purposes of an election shall not vote at the election, and if he votes he shall be guilty of an offence against this Act, and shall be liable on summary conviction before two justices of the peace to a penalty not exceeding ten pounds.

8. *Prohibition of payment for conveyance of voters.]* If a candidate or an agent for a candidate pays or agrees to pay any money on account of the conveyance of a voter to or from the poll, such candidate or agent shall be deemed to be guilty of an offence against this Act, and shall be liable on summary conviction before two justices of the peace to a penalty not exceeding five pounds.

9. *Prosecutions for corrupt practices.]* The costs and expenses of a prosecutor and his witnesses in the prosecution of any person for either of the corrupt practices of bribery, undue influence or personation at an election, together with compensation for trouble and loss of time, shall, unless the court before which such person is prosecuted otherwise directs, be allowed, paid, and borne in the same manner in which they may be allowed, paid, and borne in cases of felony (c).

The clerk of the peace of the county in which a borough is situate, or in the case of a borough which is a county of a city or a county of a town or in which there is a clerk of the peace, the clerk of the peace of such county of a city or county of a town or borough, shall, if he is directed by an election court acting under the provisions of this Act to prosecute any person for either of the corrupt practices of bribery, undue influence, or personation at the election in respect of which the court acts, or to sue or proceed against any person for penalties for bribery, treating, undue

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(b) The words in parenthesis should have been added. The section also prohibits registered burgesses from acting as paid canvassers.

(c) See 5 & 6 Will. 4, c. 76, s. 113, *ante*, p. xlviii.

influence, or any offence against this Act at such election, prosecute, sue, or proceed against such person accordingly.

10. *Provisions for striking off votes.*] The votes of persons in respect of whom any corrupt practice is proved to have been committed shall be struck off on a scrutiny.

Subject to the provisions of this section a register shall for all purposes be conclusive as to the right of the persons included therein to vote at an election for the purposes whereof such register is in force; but nothing in this section shall entitle any person to vote who is by any Act or law prohibited from voting at an election on the ground of any disqualification by office or disability, nor shall relieve any such person from any penalty, liability, or punishment to which he may by law be subject by reason of his voting at an election.

11. *As to alleged personation.*] The provisions of the Acts for the time being in force for the detection of personation and for the apprehension of persons charged with personation at a parliamentary election shall apply in the case of a municipal election (a).

## PART II.

### *Election Petitions.*

12. *Municipal elections may be questioned by petition.*] The election of any person at an election for a borough or ward may be questioned by petition before an election court constituted as hereinafter in this Act provided, and hereinafter in this Act referred to as the "court," on the ground that the election was as to the borough or ward wholly avoided by general bribery, treating, undue influence, or personation, or on the ground that the election of such person was avoided by corrupt practices or offences against this Act committed at the election, or on the ground that he was at the time of the election disqualified for election to the office for which the election was held, or on the ground that he was not duly elected by a majority of lawful votes.

An election shall not, except in the manner provided by this Act, be questioned upon an information in the nature of a *quo warranto* or by or in any process or manner whatsoever for a matter for which it might be questioned under the provisions of this Act.

13. *Presentation of petition.*] The following provisions shall have effect with reference to the presentation of a petition complaining of an undue election (hereinafter in this Act referred to as a "petition"):

- (1). A petition may be presented either by four or more persons who voted or who had a right to vote at the election or by a person alleging himself to have been a candidate at the election;

A petition shall be in the prescribed form and shall be signed by the petitioner or petitioners, and shall be presented to the superior court in the prescribed manner, and the prescribed officer shall send a copy thereof to the town clerk of the borough to which it relates, who shall forthwith publish it in the borough;

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(a) See 35 & 36 Vict. c. 33, s. 24.

The terms "petitioner" and "respondent," as hereinafter used in this Act, include respectively any one or more persons by whom a petition is presented, and any one or more persons against whose election a petition is presented :

- (2). A petition shall be presented within twenty-one days after the day on which the election was held, unless it complain of the election on the ground of corrupt practices, and specifically allege a payment of money or other reward to have been made or promised since the election by a person elected at the election, or on his account or with his privity, in pursuance or furtherance of such corrupt practices, in which case it may be presented at any time within twenty-eight days after the date of the alleged payment or promise, whether or not any other petition against such person has been previously presented or tried :
  - (3). At the time of presenting a petition or within three days afterwards, the petitioner shall give security for all costs, charges, and expenses which may become payable by him to any witness summoned on his behalf, or to any respondent. The security shall be to the amount of five hundred pounds, and shall be given in the prescribed manner either by a deposit of money or by recognizance entered into by not exceeding four sureties, or partly in one way and partly in the other :
  - (4). Within five days after the presentation of a petition the petitioner shall in the prescribed manner serve on the respondent a notice of the presentation and of the nature of the proposed security, and a copy of the petition ; and the respondent may within five days from the service of the notice object in writing to any security by way of recognizance on the ground that any surety is insufficient or is dead, or cannot be found or ascertained for want of a sufficient description in the recognizance, or that a person named in the recognizance has not duly acknowledged the same. An objection to a recognizance shall be decided in the prescribed manner :
  - (5). If an objection to the security is allowed it shall be lawful for the petitioner, within a further prescribed time not exceeding five days, to remove such objection by a deposit in the prescribed manner of such sum of money as may be deemed by the court or officer having cognizance of the matter to make the security sufficient ;
- If on objection made the security is decided to be insufficient, and the objection is not removed in manner hereinbefore mentioned, no further proceedings shall be had on the petition ; but otherwise on the expiration of the time limited for making objections, or, after objection made, on the sufficiency of the security being established, the petition shall be deemed to be at issue :
- (6). Where a petitioner complains of the conduct of a returning officer, he shall be deemed to be a respondent :
  - (7). The prescribed officer shall, so soon as may be, make out a list of all petitions under this Act presented to the superior court which are at issue, placing them in the order in which they were presented, and shall keep at his office a copy of such list, hereinafter referred to as the "municipal election list," open to the inspection in the prescribed manner of any person making application to inspect the same :
  - (8). The petitions shall, so far as conveniently may be, be tried in the order in which they stand in such list :

- (9). Two or more candidates may be made respondents to the same petition, and their cases may be tried at the same time, but for all the purposes of this Act such petition shall be deemed to be a separate petition against each respondent:
- (10). Where more petitions than one are presented relating to the same election, or to elections held at the same time for different wards of the same borough, all such petitions shall in the municipal election list be bracketed together as one petition, but such petition shall stand in the list in the place where the last of such petitions would have stood if it had been the only petition relating to that election, unless the superior court otherwise directs.
14. *Constitution of election court.*] An election court for the trial of petitions under this Act shall be constituted as follows:—
- (1). A petition shall be tried by a barrister qualified and appointed as hereinafter provided, without a jury:
  - (2). So soon as may be after a municipal election list is made out a copy thereof shall by the prescribed officer be transmitted to each of the judges for the time being on the rota for the trial of election petitions under the provisions of the Parliamentary Elections Act, 1868 (*a*), and the said judges or any two of them shall forthwith determine the number of barristers, not exceeding five at any one time, necessary to be appointed for the trial of the petitions at issue, and shall appoint such number of barristers accordingly, and shall assign the petitions to be tried by them respectively:
  - (3). No barrister shall be appointed or act for the purposes of this Act who shall be of less than fifteen years' standing, or who is a member of parliament, or who holds any office or place of profit under the Crown, other than that of a recorder, and no barrister shall try a petition relating to any borough for which he is recorder, or in which he resides, or which is included in a circuit of Her Majesty's judges on which he practises as a barrister:
  - (4). If a barrister to whom the trial of a petition is assigned, dies, or declines or becomes incapable to act, the said judges or any two of them may assign the trial to be conducted or continued by any other of the barristers appointed as aforesaid:
  - (5). The court shall for the purposes of the trial of a petition have all the same powers and privileges which a judge may have on the trial of an election petition under the provisions of the Parliamentary Elections Act, 1868 (*a*), with this modification, that any fine order of committal by the court may upon motion by the person aggrieved be discharged or varied by the superior court, or in vacation by a judge thereof, upon such terms, if any, as such superior court or judge thinks fit.
15. *Trial of a petition.*] The following provisions shall have effect with respect to the trial of a petition:
- (1). A petition shall be tried in open court, and notice of the time and place at which the petition will be tried shall be given not less than seven days before the day on which the trial is held, in the prescribed manner:
  - (2). A petition shall be tried within the borough to which it relates;

provided that, if it appear to the superior court that special circumstances exist which render it desirable that the petition should be tried elsewhere than in the borough, it shall be lawful for the superior court to appoint such other place for the trial as appears most convenient :

- (3). The court may adjourn the trial from time to time, and from any one place to any other place within the borough or place where it is held, as may seem expedient :
- (4). At the conclusion of the trial the court shall determine whether the person whose election is complained of, or any and what other person, was duly elected, or whether the election was void, and shall forthwith certify in writing the determination to the superior court, and upon the certificate being given the determination shall be final to all intents and purposes as to the matters at issue on the petition :
- (5). Where any charge is made in a petition of any corrupt practice or offence against this Act having been committed at the election to which the petition refers, the court shall, in addition to the certificate, and at the same time, report in writing to the superior court, as follows :—

(a). Whether any corrupt practice or offence against this Act has or has not been proved to have been committed by or with the knowledge and consent of any candidate at the election, and the nature of such corrupt practice or offence against this Act :

(b). The names of all persons (if any) who have been proved at the trial to have been guilty of any corrupt practice or offence against this Act.

(c). Whether any corrupt practices have, or whether there is reason to believe that any corrupt practices have extensively prevailed at the election to which the petition relates, in the borough or in any ward thereof ;

The court may at the same time make a special report to the superior court, as to any matters arising in the course of the trial, an account of which, in the judgment of the court, ought to be submitted to the superior court :

- (6). Where upon the application of any party to a petition made in the prescribed manner to the superior court, it appears to that court that the case raised by the petition can be conveniently stated as a special case, that court may direct the same to be stated accordingly, and any such special case shall be heard before the superior court, and the decision of the superior court shall be final :
- (7). If it appear to the court on the trial of a petition that any question of law as to the admissibility of evidence, or otherwise, requires further consideration by the superior court, the court may postpone the granting of a certificate until such question has been determined by the superior court, and for this purpose may reserve any such question, in like manner in which questions may be reserved by a judge on a trial at *nisi prius*.
- (8). On the trial of a petition, unless the court otherwise directs, any charge of a corrupt practice or offence against this Act may be gone into, and evidence in relation thereto received before any proof has been given of agency on behalf of any candidate in respect of such corrupt practice or offence :

- (9). On the trial of a petition complaining of an undue election and claiming the office for some person, the respondent may give evidence to prove that such person was not duly elected, in the same manner as if he had presented a petition against the election of such person :
  - (10). The trial of a petition shall be proceeded with notwithstanding that the respondent has ceased to hold the office his election to which is questioned by the petition :
  - (11). A copy of any certificate or report made to the superior court upon the trial of a petition or a statement of any decision made by the superior court shall by the superior court be transmitted to one of Her Majesty's principal secretaries of state :
  - (12). A copy of any certificate made by the court to the superior court, or in the case of a decision by the superior court upon a special case a statement of such decision shall be certified by the superior court, under the hands of two or more judges of the superior court, to the town clerk of the borough to which the petition relates.
16. *Provisions as to witnesses.*] The following provisions shall have effect with respect to witnesses at the trial of a petition :
- (1). Witnesses shall be summoned and sworn in the same manner, as nearly as circumstances will admit, as witnesses at a trial *at nisi prius*, and shall be liable to the same penalties for perjury :
  - (2). On the trial of a petition the court may, by order in writing, compel the attendance of any person as a witness who appears to the court to have been concerned in the election to which the petition refers, and any person refusing to obey such order shall be guilty of contempt of court. The election court may examine any witness so compelled to attend, or any person in court although such witness is not called and examined by any party to the petition. After the examination of a witness by the election court such witness may be cross-examined by or on behalf of the petitioner and respondent, or either of them :
  - (3). The provisions of the seventh section of the Act of the twenty-sixth and twenty-seventh of Her Majesty, chapter twenty-nine, relating to the examination and indemnity of witnesses, shall apply to any witness appearing before the court on the trial of a petition under this Act, and the certificate shall be given by the court ; provided always, that the giving or refusal to give such certificate by the court shall be final and conclusive, and shall not be questioned by any proceeding or in any court whatsoever :
  - (4). The reasonable expenses incurred by any person in appearing to give evidence at the trial of a petition according to the scale allowed to witnesses on the trial of civil actions at the assizes, may be allowed to such person by a certificate of the court or of the prescribed officer, and such expenses, if the witness was called and examined by the court, shall be deemed part of the expenses of providing a court, and in other cases shall be deemed to be costs of the petition.
17. *Withdrawal and abatement of petitions.*] The following provisions shall have effect with respect to the withdrawal and abatement of petitions :



- (1). A petition shall not be withdrawn without the leave of the court or superior court upon special application, to be made in and at the prescribed manner, time, and place ;

No such application shall be made for the withdrawal of a petition until the prescribed notice has been given in the borough to which the petition relates, of the intention of the petitioner to make an application for the withdrawal of his petition :

- (2). On the hearing of the application for withdrawal any person who might have been a petitioner in respect of the election to which the petition relates, may apply to the court or superior court to be substituted as a petitioner for the petitioner so desirous of withdrawing the petition ;

The court or superior court may, if it think fit, substitute as a petitioner any such applicant as aforesaid ; and may further, if the proposed withdrawal is in the opinion of the court or superior court induced by any corrupt bargain or consideration, by order direct that the security given on behalf of the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner, and that to the extent of the sum named in such security, the original petitioner and his sureties shall be liable to pay the costs of the substituted petitioner :

- (3). If no such order is made with respect to the security given on behalf of the original petitioner, security to the same amount as would be required in the case of a new petition, and subject to the like conditions, shall be given on behalf of the substituted petitioner before he proceeds with his petition, and within the prescribed time after the order of substitution :

- (4). Subject as aforesaid a substituted petitioner shall stand in the same position as nearly as may be, and be subject to the same liabilities, as the original petitioner ;

If a petition is withdrawn the petitioner shall be liable to pay the costs of the respondent ;

Where there are more petitioners than one, no application to withdraw a petition shall be made except with the consent of all the petitioners :

- (5). A petition shall be abated by the death of a sole petitioner or of the survivor of several petitioners :

The abatement of a petition shall not affect the liability of the petitioner or of any other person to the payment of costs previously incurred ;

On the abatement of a petition the prescribed notice of such abatement having taken place shall be given in the borough to which the petition relates, and within the prescribed time after the notice is given, any person who might have been a petitioner in respect of the election to which the petition relates, may apply to the court or superior court in and at the prescribed manner, time, and place, to be substituted as a petitioner ;

The court or superior court may, if it think fit, substitute as a petitioner any such applicant who is desirous of being substituted and on whose behalf security to the same amount is given as is required in the case of a new petition.

18. *Withdrawal and substitution of respondents.*] The following provisions shall have effect with respect to the withdrawal and substitution of respondents upon a petition :

- (1). If before the trial of a petition either of the following events happens in the case of a respondent other than a returning officer ; viz.,—

(a). If he dies, resigns, or otherwise ceases to hold the office to which the petition relates ; or,

(b). If he gives the prescribed notice that he does not intend to oppose the petition ;

Notice of such event having taken place shall be given in the borough to which the petition relates, and within the prescribed time after the notice is given any person who might have been a petitioner in respect of the election to which the petition relates, may apply to the court or superior court to be admitted as a respondent to oppose the petition, and such person shall be admitted accordingly, and any number of persons not exceeding three may be so admitted :

- (2). A respondent who has given the prescribed notice that he does not intend to oppose the petition shall not be allowed to appear or act as a party against such petition in any proceedings thereon.

19. *Costs on petitions.*] The following provisions shall have effect with respect to costs on the trial of a petition :

- (1). All costs, charges, and expenses of and incidental to the presentation of a petition, and to the proceedings consequent thereon, with the exception of such costs, charges, and expenses as are by this Act otherwise provided for, shall be defrayed by the parties to the petition in such manner and in such proportions as the court by which the petition is tried may determine ; and in particular any costs, charges, or expenses which in the opinion of the court by which the petition is tried have been caused by vexatious conduct, unfounded allegations, or unfounded objections on the part either of the petitioner or the respondent, and any needless expense incurred or caused on the part of petitioner or respondent, may be ordered to be defrayed by the parties by whom it has been incurred or caused, whether such parties are or not on the whole successful :

- (2). The costs may be taxed in the prescribed manner, but according to the same principles as costs between attorney and client in a suit in the High Court of Chancery, and such costs may be recovered in the same manner as the costs of an action at law, or in such other manner as may be prescribed :

- (3). If any petitioner neglect or refuse for the space of three months after demand to pay to any person summoned as a witness on his behalf, or to the respondent, any sum certified to be due to him for his costs, charges, and expenses, and if such neglect or refusal be, within one year after such demand, proved to the satisfaction of the superior court, every person who has entered into a recognizance relating to such petition under the provisions of this Act shall be held to have made default in his said recognizance, and the prescribed officer shall thereupon certify such recognizance to be forfeited, and the same shall be dealt with in the same manner as a forfeited recognizance under the provisions of the Parliamentary Elections Act, 1868 (a).

20. *Reception of and attendance on the court.*] The following provisions shall have effect with reference to the reception of the court upon the trial of a petition :

- (1). The town clerk of a borough in respect of which a petition is to be tried shall provide proper accommodation for holding the election court ; and any expenses incurred by him for the purposes of this section shall be paid by the treasurer of the borough out of the borough fund or rate :
- (2). All superintendents of police, chief constables, headboroughs, gaolers, constables, and bailiffs, shall give their assistance to the court in the execution of the duties of the said court, and if any gaoler or officer of a prison makes default in receiving or detaining a prisoner committed thereto in pursuance of the provisions of this Act he shall incur a penalty not exceeding five pounds for every day during which such default continues :
- (3). The court may employ such officers and clerks as may be allowed by general rules to be made under the provisions of this Act :
- (4). A shorthand writer shall attend at the trial of a petition, and shall be sworn by the court faithfully and truly to take down the evidence given at the trial, and shall take down the evidence at length, and a copy of the evidence so taken shall accompany the certificate of the said court, and the expenses of the shorthand writer, according to a scale to be prescribed, shall be deemed to be part of the expenses incurred in receiving the court.

21. *Jurisdiction and general rules.*] The following provisions shall have effect with respect to jurisdiction, and to general rules :—

- (1). The judges for the time being on the rota for the trial of election petitions under the provisions of the Parliamentary Elections Act, 1868 (*b*), may from time to time make, revoke, and alter general rules for the effectual execution of this Act, and of the intention and object thereof, and the regulation of the practice, procedure and costs of petitions, and the trial thereof, and the certifying and reporting thereon ;

Any general rules made as aforesaid shall, in so far as they are not inconsistent with any of the provisions of this Act, be deemed to be within the powers conferred by this Act, and shall be of the same force as if they were enacted in the body of this Act ;

Any general rules made in pursuance of this section shall be laid before parliament within three weeks after they are made, if parliament be then sitting, and if parliament be not then sitting, within three weeks after the beginning of the then next session of parliament :

- (2). Until general rules have been made in pursuance of this Act, and so far as such rules (when made), and the provisions of this Act, do not extend, the principles, practice, and rules which are for the time being observed in the case of election petitions under the provisions of the Parliamentary Elections Act, 1868 (*b*), shall be observed so far as may be by the court and superior court in the case of petitions under this Act :
- (3). The duties to be performed by the prescribed officer under this Act shall be performed by the prescribed officer of the superior court :
- (4). The rules and principles with regard to agency and evidence, and with regard to a scrutiny, and with regard to the declaring any

person to be elected in the room of any other person who is declared to have been not duly elected, which are applicable in the case of parliamentary election petitions shall be applied so far as they are applicable in the case of a petition under this Act :

- (5). The superior court shall, subject to the provisions of this Act, have the same powers, jurisdiction, and authority with reference to an election petition and the proceedings thereon as it would have if the petition were an ordinary cause within its jurisdiction.

22. *Expenses of the court.*] The remuneration and allowances to be paid to a barrister for his services in respect of the trial of a petition, and to any officers, clerks, or shorthand writers employed under the provisions of this Act, shall be fixed by a scale which shall be made and may be varied from time to time by the election judges on the rota for the trial of election petitions under the provisions of the Parliamentary Elections Act, 1868 (a), with the approval of the said commissioners of Her Majesty's Treasury, or any two or more of them, and the amount of any such remuneration and allowances shall be paid by the said commissioners, and shall be repaid to the said commissioners on their certificate, by the treasurer of the borough to which the petition relates, out of the borough fund or rate :

Provided that the court at its discretion may order that the whole or any part of such remuneration and allowances, or the whole or any part of the expenses incurred by a town clerk for receiving the court under the provisions of this Act, shall be repaid to the said commissioners or to the town clerk, as the case may be, in the cases, by the persons, in the manner following ; viz.—

- (a). When in the opinion of the court a petition is frivolous and vexatious, then by the petitioner :
- (b). When in the opinion of the court a respondent has been personally guilty of corrupt practices at the election, then by such respondent :

And any order so made for the repayment of any sum by a petitioner or respondent may be enforced in the same way as an order for payment of costs ; but any other costs or expenses payable by such petitioner or respondent to any party to the petition shall be satisfied out of any deposit or security made or given under the provisions of this Act before such deposit or security is applied for the repayment of any sum under an order made in pursuance of this section.

23. *Acts done pending a petition not to be invalidated.*] Where a candidate who has been elected to an office at an election is by a certificate of the court, or by a decision of the superior court, declared not to have been duly elected, acts done by him in execution of such office before the time when the certificate or decision is certified to the town clerk, shall not be invalidated by reason of his being so declared not to have been duly elected.

24. *Provisions as to elections in the room of persons unseated on petition.*] Where upon a petition the election of any person to an office has been declared void, and no other person has been declared elected in his room, a new election shall forthwith be held to supply the vacancy in the same manner as in the case of an extraordinary vacancy in the office (b) ; and for the purposes of any such new election any duties to be performed by a mayor,

(a) 31 & 32 Vict. c. 125.

(b) See 5 & 6 Will. 4, c. 76, s. 47, *ante* p. xx ; and 7 Will. 4, and 1 Vict. c. 78, s. 11, *ante*, p. lxxxiii.

alderman, or any officer, shall, if such mayor, alderman, or officer has been declared not elected, be performed by a deputy, or other person who might have acted for him if he had been incapacitated by illness.

25. *Computation of time.*] In reckoning time for the purposes of this Act, Sunday, Christmas Day, Good Friday, and any day set apart for a public fast or public thanksgiving shall be excluded.

26. *Prohibition of disclosure of vote.*] No person who has voted at an election by ballot shall in any proceeding to question the election be required to state for whom he has voted.

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29. *Repeal of Acts as in schedule.*] The Acts mentioned in the schedule to this Act are repealed to the extent therein mentioned; but such repeal shall not affect the validity or invalidity of anything already done or suffered, or any offence already committed, or any remedy or proceeding in respect thereof, or the proof of any past act or thing (c).

## SCHEDULE.

### *Acts repealed.*

5 & 6 Will. 4, c. 76, ss. 54 to 56, both inclusive.

22 Vict. c. 35, ss. 9 to 14, both inclusive.

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## 35 & 36 VICT. CAP. LXVIII.

An Act to make provision for defraying the Expenses of Building Barracks and otherwise providing for the Localization of the Military Forces (d).

[10th August, 1872.]

\* \* \* \* \*

10. *Power for* \* \* *boroughs to transfer buildings or land to secretary of state.*] The \* \* \* council of any municipal borough, may transfer to the said secretary of [state for the War Department], for the purposes of this Act, upon such terms and with or without payment of a pecuniary consideration as they think expedient, any barracks, storehouses for arms or ammunition, or other buildings or land held in the case of \* \* \* a borough for the public uses or purposes of such borough \* \* \*

## 35 & 36 VICT. CAP. LXXXVI.

An Act to amend the Law relating to Borough and other Local Courts of Record.

[10th August, 1872.]

WHEREAS it is expedient to amend the law relating to borough and other local courts of record in England or Wales: be it therefore enacted, &c., as follows:—

(c) For the General Rules made by the Judges under sect. 21 of this Act. *Vid. post*, ccliv.

(d) "The Military Forces Localization Act, 1872."

1. *Short title.*] This Act may be cited as "The Borough and Local Courts of Record Act, 1872."

2. *Her Majesty may direct certain enactments to extend to any local court of record.*] It shall be lawful for Her Majesty from time to time by an order in council to direct that all or any part of the provisions of an Act passed in the first and second years of His late Majesty King William the Fourth, intituled *An Act to enable courts of law to give relief against adverse claims made upon persons having no interest in the subject of such claims* (a), and of the provisions set forth in the schedule to this Act, shall apply to all or any local court or courts of record in England or Wales; and within one month after such order shall have been made and published in the *London Gazette*, such provision shall extend and apply in manner directed by such order, and any such order may be in like manner from time to time altered and annulled; and in and by such order Her Majesty may alter and modify such provisions as are mentioned in the schedule, so as to adapt the same to the constitution, jurisdiction, and procedure of any such court or courts, and may direct by whom and at what time or times any powers and duties incident to the provisions applied under this Act shall and may be exercised with respect to the matters in such court or courts, and may make any orders or regulations which may be deemed requisite for carrying into operation in such court or courts the provisions so applied.

3. *Her Majesty may direct, that writ, &c., may be served as specified.*] It shall also be lawful for Her Majesty from time to time by such order as aforesaid to direct that any writ, order, summons, or process issuing out of or made or taken in any such court of record may be served in such part or parts of England and Wales as shall be specified in such order.

4. *Two or more courts may be held at the same time.*] Two or more courts may be held at the same time either for the trial of issues or for the ordinary proceedings of the court.

5. *Affidavits made before any commissioner, &c.*] Affidavits made before any commissioner or other person appointed or authorized to take affidavits, either in England or elsewhere, by the Lord High Chancellor, or by any of the superior courts or by the judges thereof, may be used in the court, and the signature of any person purporting to be such commissioner, or to be a person so appointed or authorized as aforesaid, need not be verified.

6. *Power to send writs of execution to bailiffs of county court.*] In all cases where final judgment shall have been obtained in any action brought in the court wherein the debt or damage does not exceed twenty pounds, exclusive of costs, and also in all cases where any rule or order shall be made by the judge for the payment of any sum of money, or any costs, charges, or expenses, not exceeding the sum of twenty pounds, such court shall be at liberty to send a writ or precept for the recovery of the same to the registrar of any county court within the jurisdiction of which the defendant may possess any goods or chattels; and the registrar of such county court shall stamp or seal the same, and thereupon the high bailiff of

such county court shall execute the same in the same manner as if such writ or precept had been issued out of such county court, and such high bailiff shall take all the usual and proper fees thereupon, and shall make a return of what he shall have done thereunder to the bailiff or serjeant-at-mace of the court; and in all matters done under such writ or precept, or in relation thereto, such high bailiff shall be under the direction and control of the judge of the county court of which he is high bailiff, as if such writ or precept had issued out of such county court: provided always, that the cost of more than one writ, precept, or warrant shall not be allowed against the execution debtor unless by order of the judge of the said court.

7. *Judge may appoint a deputy.*] A judge of any court may appoint a deputy or assistant judge to execute any particular portion or duty of such judge, such appointment being under such orders, rules, and regulations as Her Majesty by order in council may direct, provided such deputy shall be a barrister of not less than seven years' standing.

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#### The SCHEDULE to which the Act refers.

i. *Interpretation of terms.*] In the construction of the following provisions the word "court" shall be understood to mean the court of record to which such provisions as aforesaid, or any of them, are made applicable by an order of Her Majesty in council. The word "judge" shall be understood to mean the judge, deputy or assistant judge, for the time being of such court. The words "superior courts" shall be understood to mean the superior courts of common law at Westminster.

ii. *Power to judge when out of the jurisdiction to hear motions.*] The judge may, at any time within such time and such manner as is permitted by the rules of the court, and whether the court be sitting or not, and either when within or when out of the limits of the jurisdiction of the court, hear and grant applications for rules to show cause in arrest of judgment, or for judgment *non obstante veredicto*, or for a repleader, or for granting new trials, or for entering nonsuits and verdicts in causes pending in the court, to the same extent and subject to the rules and regulations to be made in respect thereof in the same manner as rules and regulations are made in the court; and all rules and orders made by the judge upon the hearing of such motions out of court shall be as valid and binding upon the parties as if the same had been made during the sittings of the court.

iii. *Judge to determine fees payable to registrar and officers of the court.*] The judge shall and he is hereby required to make and settle a table of the fees to be taken by the registrar and the bailiff or other officers of the court, and such table of fees shall be submitted to two judges of the superior courts; and if such table of fees shall be confirmed and allowed by such judges, either as such table shall have been submitted to them, or with such alterations, additions, or abatements as they shall think proper, the fees therein mentioned, and no other, may henceforth be lawfully taken by the officer therein declared to be entitled thereunto.

iv. *Power to judge to alter fees from time to time.*] It shall be lawful for the judge from time to time, as occasion shall require, to make and settle a new table of fees to be taken instead of the fees contained in the table of fees which shall have been made and settled as aforesaid, but such new table shall be of no validity until confirmed and allowed in the manner hereinbefore mentioned.

v. *Table of fees to be exhibited.*] The registrar shall cause a true copy of the table of fees in force for the time being to be exhibited in a conspicuous part of the office of the registrar.

vi. *A special case may be stated for the opinion of one of the superior courts at Westminster.*] The parties in any action may, after issue joined by consent and by order of the registrar, state the facts of the case in the form of a special case for the opinion of any one of the superior courts, and may agree that a judgment shall be entered in the court for the plaintiff or defendant, as such superior court shall think fit.

vii. *Special case to be transmitted by the registrar to the rule department.*] The registrar shall transmit such special case under seal of the court to the rule department of the master's office of the superior court in which the case is to be argued, and thereupon all such proceedings shall be taken and rules and regulations observed in the superior court as are usual with reference to cases stated for the opinion of such superior court in actions therein pending.

viii. *Upon production to registrar of rule of superior court, judgment to be entered.*] The registrar, upon the production of an office copy of the rule of the superior court made upon hearing such special case, shall enter judgment in the court in conformity with the decision of the superior court.

ix. *Removal of judgments into the superior courts.*] In all cases where final judgment shall be obtained in any action brought in the court, where the sum recovered, exclusive of costs, is not less than twenty pounds, and also in all cases where any rule or order shall be made by the judge for the payment of any sum of money not less than twenty pounds, it shall be lawful for any judge of any of the superior courts, either in term or vacation, upon the application of any person entitled to the benefit of such judgment, rule or order, and upon the production of such judgment, rule, or order, under the seal of the court and signature of the proper officer, to direct such judgment, rule, or order, or a copy of such judgment, rule, or order, verified by affidavit, to be filed with the clerk of the judgments of one of the superior courts, and thereupon such judgment, rule, or order shall be of the same effect as a judgment recovered in or a rule or order made by such superior court, and all proceedings shall and may be immediately had and taken thereupon, or by reason or in consequence thereof, as if such judgment so recovered, or rule or order so made, had been originally recovered in or made by the superior court; and all the reasonable costs and charges of such application and removal shall be recovered in like manner as if the same were part of such judgment, rule, or order.

x. *Commission may be issued by a judge of a superior court to examine witnesses abroad.*] Upon the application of any of the parties to any such action depending in the court, any one of the judges of the superior courts



at Westminster may order a commission to issue for the examination of witnesses upon oath at any place or places beyond the limits of England and Wales by interrogatories or otherwise, and by the same or any subsequent order or orders may give all such directions touching the time, place, and manner of such examination, and all other matters and circumstances connected with such examination, as may appear reasonable and just.

xi. *Nonsuit.*] The judge shall have power to nonsuit the plaintiff in every case in which satisfactory proof shall not be given to him entitling either the plaintiff or defendant to the judgment of the court, and shall also in every case whatever have the power, if he shall think fit, to order a new trial to be had upon such terms as he shall think reasonable, and in the meantime to stay the proceedings.

xii. *No actions to be removed into superior courts but on certain conditions.*] No action entered in the court shall before judgment be removed or removable from the court into any superior court by any writ or process, except by leave of a judge of one of the superior courts in cases which shall appear to such judge fit to be tried in one of the superior courts, and upon such terms, as to payment of costs, security for debt and costs, or such other terms, as such judge shall think fit.

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### 35 & 36 VICT. CAP. XCI.

An Act to authorize the application of Funds of Municipal Corporations and other governing bodies in certain cases. [10th August, 1872.]

WHEREAS by the Act passed in the session holden in the twentieth and twenty-first years of the reign of Her Majesty, intituled *An Act to amend the Acts concerning the municipal corporations* (a), the trustees acting under any Act of parliament for supplying any borough, or any district within or in certain cases beyond the limits of a borough, with water or gas, or having powers for providing or maintaining any cemetery or market in or for any borough, or otherwise improving the same, are authorized and empowered to transfer to the body corporate of such borough all their rights, estates, properties, and liabilities:

And whereas by the ninety-second section of the Act passed in the session holden in the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six (b), to provide for the regulation of municipal corporations in England and Wales, in each borough the annual proceeds of all property and hereditaments belonging to the body corporate, and fines and rates levied in the borough, are directed to form the borough fund, and such fund is directed to be applied in the payment of certain salaries and certain expenses and the expenses necessarily incurred in carrying into effect the provisions of the said Act, and the surplus (if any) of such fund is directed to be applied, under the direction of the council, for the public benefit of the inhabitants and the improvement of the borough:

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(a) 20 & 21 Vict. c. 50. See sect. 2, *ante* p. cxlviii.

(b) *Ante*, p. xxxviii.

And whereas the Public Health Act, 1848 (*a*), the Local Government Act, 1858 (*b*), and various local Acts of parliament, have conferred powers of improving, cleansing, paving, lighting, and otherwise governing places or districts upon boards of health, commissioners, trustees, or other persons :

And whereas it is expedient to extend the powers of governing bodies so as to enable them to apply the borough or other funds under the control of such governing body towards such costs, charges, and expenses as may be incurred for the purposes and in the manner herein provided :

Be it therefore enacted, &c.

1. *Interpretation of terms.*] The term "governing body" in this Act shall mean the council of any municipal borough, the board of health, local board, commissioners, trustees, or other body acting under any general or local Act of parliament for the management, improvement, cleansing, paving, lighting, and otherwise governing places or districts, and the term "district" shall mean the borough, place, township, or district within which the governing body may for the time being have jurisdiction (*c*).

2. *Costs of promoting or opposing parliamentary and other proceedings for benefit of inhabitants to be charged on borough and local funds, except in certain cases.*] When in the judgment of a governing body in any district it is expedient for such governing body to promote or oppose any local and personal bill or bills in parliament, or to prosecute or defend any legal proceedings necessary for the promotion or protection of the interests of the inhabitants of the district, it shall be lawful for such governing body to apply the borough fund, borough rate, or other the public funds or rates under the control of such governing body to the payment of the costs and expenses attending the same; and when there are several funds or rates under the control of the governing body, such governing body shall determine out of which fund or funds, rate or rates, such expense shall be payable, and in what proportions: provided that nothing in this Act contained shall authorize any governing body to promote any bill in parliament for the establishment of any gas or water works to compete with any existing gas or water company established under any Act of parliament: provided that no powers contained in this clause shall apply in any case where the promotion of or opposition to a bill by a governing body has been decided by a committee of either house of parliament to be unreasonable or vexatious.

3. *No payment to member of governing body to be so charged.*] No payment to any member of a governing body for acting as council (*sic*) or agent in promoting or opposing any such bill shall be charged as aforesaid.

4. *Costs of promoting or opposing bills to require sanction of special meetings.*] No expense in relation to promoting or opposing any bill or bills in parliament shall be charged as aforesaid unless incurred in pursuance of a resolution of an absolute majority of the whole number of the governing body at a meeting of the governing body, after ten clear days' notice by public advertisement of such meeting and of the purpose thereof in some local newspaper published or circulating in the district, such notice to be in addition to the ordinary notices required for summoning such meeting, nor unless such resolution shall have been published twice in some newspaper

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(*a*) 11 & 12 Vict. c. 63.

(*b*) 21 & 22 Vict. c. 98.

(*c*) Proviso as to the borough of Cambridge omitted.

or newspapers circulating in the district, and shall have received, in respect of matters within the jurisdiction of the Local Government Board, the approval of such board, and in respect of other matters, the approval of one of Her Majesty's secretaries of state, and in case of the promotion of a bill in parliament no further expense shall be incurred or charged as aforesaid after the deposit of the bill, unless the propriety of such promotion shall be confirmed by such absolute majority at a further special meeting to be held in pursuance of a similar notice not less than fourteen days after the deposit of the bill in parliament: provided further, that no expense in promoting or opposing any bill in parliament shall be charged as aforesaid unless such promotion or opposition shall have had the consent of the owners and rate-payers of that district, to be expressed by resolution in the manner provided in the Local Government Act (1858) (d) for the adoption of that Act.

5. *Proviso as to approval of Local Government Board, &c., to any such resolution.*] The approval of the Local Government Board or one of Her Majesty's principal secretaries of state, as the case may be, shall not be given to any such resolution as aforesaid until the expiration of seven days after the second publication thereof, as provided by this Act, and in the meantime any ratepayer within the district of the governing body may give notice in writing to the Local Government Board or secretary of state objecting to such approval.

6. *Costs to be examined.*] All costs, charges, and expenses incurred under the provisions of this Act shall, before the same become chargeable, be examined and allowed by some person to be authorized by one of Her Majesty's principal secretaries of state or by the Local Government Board, as the case may be.

7. *Power to direct local inquiry.*] The Local Government Board, or one of Her Majesty's principal secretaries of state, shall have power to direct a local inquiry to be held upon any application under this Act, by any person or persons whom they may respectively nominate for the purpose, and to charge the costs and expenses of such local inquiry upon the governing body or the person by whom such application shall be made.

8. *Saving clause.*] Nothing in this Act shall extend or be construed to alter or affect any special provision which is or shall be contained in any other Act for the payment of the costs, charges, and expenses intended to be provided for by this Act, or to take away or diminish any rights or powers now possessed or enjoyed by any governing body, or which are or shall be vested in or exercisable by the inhabitants of any district under any general or special Act.

9. *Towns Improvement Clauses Act, 1847, s. 142, repealed.*] The one hundred and forty-second section of "The Towns Improvement Clauses Act, 1847," (e) is hereby repealed so far as the same is inconsistent with the provisions of this Act.

10. *Act not to extend to bills if object attainable by provisional order.*] The provisions of this Act shall not extend to applications for any bill in parliament for any object which would, for the time being, be attainable by provisional order.

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## 36 &amp; 37 VICT. CAP. XXXIII.

An Act to facilitate the Proof of Bye-laws and Proceedings of Municipal Corporations in England and Wales. [7th July, 1873.]

WHEREAS it is expedient to facilitate the proof of the bye-laws and proceedings of municipal corporations in England and Wales :

Be it therefore enacted, &c.

1. *Short title.*] This Act may be cited for all purposes as the “Municipal Corporations Evidence Act, 1873.”

2. *Proof of bye-laws.*] The production of a written or printed copy of any bye-laws made by the council of a borough, either under the Municipal Corporations Act of the fifth and sixth of William the Fourth, chapter seventy-three, (a) or under any present or future general or local Act of parliament, authenticated by the common seal of the borough, shall be evidence, until the contrary is proved, of the due making and existence of such bye-laws, and, if so stated in such copy, of the same bye-laws having been approved and confirmed by the authority whose approval or confirmation is or shall be required to the making or enforcing of such bye-laws in all legal proceedings, without further proof of the making of such bye-laws, or of such approval or confirmation, or of the said common seal.

3. *Proofs of proceedings of council and its committees.*] Any minute of proceedings at meetings of the council, or of committees of the council, if signed by any person purporting to be the mayor of the borough or the chairman of a meeting of the council or committee of the council, either at the meeting of the council or committee of the council at which such proceedings took place, or at the next ensuing meeting of the council or committee of the council, shall be receivable in evidence in all legal proceedings, without further proof; and, until the contrary is proved, every meeting of the council or committee of the council in respect of the proceedings of which minutes have been so made shall be deemed to have been duly convened and held, and all the members thereof to have been duly qualified, and, when such proceedings are proceedings of committees, that such committees have been duly and regularly constituted, and had power to deal with the matters referred to in such proceedings.

4. *Punishment for forging seal or signatures.*] If any person shall forge the seal or signatures of any document in this Act mentioned or referred to, or shall tender in evidence any such document with a false or counterfeit seal or signature thereto, knowing the same to be false or counterfeit, he shall upon conviction be liable to imprisonment for any term not exceeding three years nor less than one year with hard labour.

5. *Interpretation of “borough.”*] The word “borough” in the construction of this Act shall mean city, borough, or town corporate.

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(a) This should be seventy-six.

## 36 &amp; 37 VICT. CAP. LXVIII.

An Act for extending the Period of Service in the Militia; and for other purposes. [5th August, 1873.]

8. *Amendment of the Military Forces Localization Act, 1872 (35 & 36 Vict. c. 68), s. 10 (b).*] Where any municipal borough or boroughs has or have contributed towards the expense of providing any barracks, storehouses for arms and ammunition, or other buildings or land which may be transferred to the secretary of state in pursuance of the tenth section of the Military Forces Localization Act, 1872, such borough or boroughs shall be entitled to share in any monies paid by the secretary of state as a consideration for such transfer in the proportion which the amount of their contribution bears to the original amount expended in providing such barracks, storehouses, buildings, or lands.

"Municipal borough" shall, in this section, have the same meaning which it has in the Military Forces Localization Act, 1872 (c).

## 36 &amp; 37 VICT. CAP. LXXXVI.

An Act to amend the Elementary Education Act (1870), and for other purpose connected therewith. [5th August, 1873.]

8. *Corrupt practices at elections.*] Every person who under the principal Act (d) is disqualified by a conviction for corrupt practices at any election from exercising any franchise for any term of years shall be also disqualified during the same term of years from being a member of a school board and from holding any municipal office.

## 37 &amp; 38 VICT. CAP. LIX.

An Act to facilitate the erection of Dwellings for Working Men on land belonging to Municipal Corporations. [7th August, 1874.]

WHEREAS it is expedient to encourage the erection of dwelling-houses suitable for persons employed in manual labour, and to afford increased facilities for the acquisition of sites for such dwelling-houses:

Be it therefore enacted, &c.

1. *Short title.*] This Act may be cited as the Working Men's Dwellings Act, 1874.

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(b) *Ante* p. ccxli.

(c) The Act referred to gives no explanation of the meaning of "municipal borough."

(d) 33 & 34 Vict. c. 75 (see s. 91).

3. *Interpretation of terms.*] In this Act—

“Corporation” means a municipal corporation for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth (chapter seventy-six) *to provide for the regulation of municipal corporations in England and Wales* (in this Act called the Municipal Corporations Act) acting by the council of the borough:

“Working men’s dwellings” means buildings suitable for the habitation of persons employed in manual labour and their families, but so that the use of part of a building for purposes of retail trade or other purposes, approved by a corporation, shall not prevent the building from being deemed a dwelling:

“The Treasury” means the commissioners of Her Majesty’s Treasury, or two of them.

4. *Power to annex conditions as to building, &c.*] Where a corporation determine that any land belonging to them shall be converted into sites for working men’s dwellings, and on a representation to the Treasury of the circumstances of the case, under section ninety-four of the Municipal Corporations Act, obtain the approval of the Treasury to the corporation making for that purpose grants or leases for terms of nine hundred and ninety-nine years, or any shorter term, of parts of that land, then the following provisions shall have effect and apply:—

- (1). The corporation may make on the land any roads, drains, walls, fences, or other works requisite for converting the same into building land, at an expense not exceeding such sum as the Treasury approve:
- (2). The corporation may insert in any grant or lease of any part of the land (in this Act referred to as the site) provisions binding the grantee or lessee to build thereon as in the grant or lease prescribed, and to maintain and repair the building, and prohibiting the division of the site or building, and any addition to or alteration of the character of the building, without the consent of the corporation, and for the re-vesting of the site in the corporation, or their re-entry thereon, on breach of any provision in the grant or lease:
- (3). Every provision as aforesaid shall be valid in law to all intents, and binding on the parties:
- (4). A grant or lease by the corporation of the site, and any subsequent conveyance or assignment thereof, in the respective form set forth in the schedule to this Act, or to the like effect, with such variations and additions as circumstances require, shall be good and effectual in law to all intents; and terms used in those forms shall have the same meaning as in this Act.

5. *As to costs.*] All costs and expenses incurred or authorized by a corporation in carrying into execution or otherwise in pursuance of this Act, shall be paid out of the borough fund and borough rate, or by money borrowed by the corporation under the Municipal Corporation Mortgages, &c., Act, 1860 (a).

## SCHEDULE.

(A).

*Form of Grant by Corporation.*

The Working Men's Dwellings Act, 1874.

Borough of —.

Grant. No. —.

The mayor, aldermen, and burgesses of the borough of — by virtue and in pursuance of the above-mentioned Act, and in consideration of — paid to them by *A. B.* of — hereby grant to the said *A. B.* (herein referred to as the grantee), and his heirs, the site following, (that is to say); [*insert description*] with the appurtenances subject to the following conditions (that is to say):

1. The grantee shall build on the site one working-man's or working-men's dwelling (and no more) according to the plan and specification deposited in the office of the town clerk, numbered —, and under the superintendence and to the satisfaction of the corporation.

2. The grantee, his heirs and assigns, shall always maintain and repair the building, and shall not sell or alienate the site or buildings in divisions or separate parts, and, in case of the taking down or destruction of the building shall not rebuild it except in manner approved by the corporation.

3. The grantee, his heirs or assigns, shall not add to or alter the character of the building without the consent of the corporation.

4. If at any time the grantee, his heirs or assigns, fail to fully observe and perform any stipulation of this grant, the corporation may, if they think fit, declare that the site is re-vested in the corporation; and thereupon the same, with the dwelling and other buildings thereon, shall become and be vested in the corporation, as if this grant had not been made.

In witness whereof, &c., this — day of —, 187—.

(*Corporate Seal*).

(B).

*Form of Transfer of Grant.*

The Working Men's Dwelling Act, 1847.

Borough of —.

Transfer No. —.

(Grant No. —.)

*A. B.* of —, by virtue and in pursuance of the above-mentioned Act, and in consideration of — paid to him by *C. D.* of —, hereby grants and transfers to the said *C. D.* and his heirs the site comprised in the within-written (a) grant [or the grant No. — under the said Act, dated the — day of —, 187— (b)] with the appurtenances and with the dwelling

(a) [In case of transfer by indorsement.]

(b) [In case of transfer by separate deed.]

and other buildings thereon, subject to the conditions on which that site is held immediately before the execution of this transfer.

In witness whereof, &c., this — day of —, 187—.

A. B. (L.S.)

(C).

*Form of Lease by Corporation.*

The Working Men's Dwellings Act, 1874.

Borough of —.

Lease No, —.

The mayor, aldermen, and burgesses of the borough of —, by virtue and in pursuance of the above-mentioned Act, and in consideration of the sum of — paid to them by A. B. of —, and of the rent and stipulations in this lease reserved and contained, and to be by him, his executors, administrators, or assigns, paid and performed, hereby lease to the said A. B. (herein referred to as the lessee), his executor and administrator, the site following (that is to say) [*insert description*] with the appurtenances, for the term of [*nine hundred and ninety-nine*] years from the — day of —, at the yearly rent (clear of all deductions) of —, payable by two equal half-yearly payments on the — day of — and the — day of — in every year, the first thereof to be made on the — day of —, and the last thereof to be made in advance on the — day of — next before the end of the term, and so that on the term being determined by re-entry a proportionate part of the rent for the fraction of the current half year up to re-entry be repayable.

And the lessee hereby covenants with the corporation that he, his executors, administrators, or assigns, will during the term pay the rent on the days and in manner aforesaid, and will pay all taxes, rates, and outgoings for the time being payable by the tenant in respect of the premises.

And this lease is made subject to the following conditions (that is to say):—

1. The lessee shall build on the site one working-man's or working-men's dwelling (and no more) according to the plan and specification deposited in the office of the town clerk, and numbered —, under the superintendence and to the satisfaction of the corporation.

2. The lessee, his executors, administrators, and assigns, shall always during the term maintain and repair the building, and shall not sell or alienate the site or building in divisions or separate parts, and, in case of the taking down or destruction of the building, shall not rebuild it except in manner approved by the corporation.

3. The lessee, his executors, administrators or assigns, shall not add to or alter the character of the building without the consent in writing of the corporation.

4. If at any time the lessee, his executors, administrators, or assigns, fail to duly pay the rent hereby reserved, or to fully observe and perform any stipulation herein contained, the corporation may, if they think fit, re-enter on any part of the site in the name of the whole, and thereupon the term of — years shall absolutely cease.

In witness whereof, &c., this — day of —, 187.

(Corporate Seal.)  
A. B. (L. S.)



(D).

*Form of Assignment of Lease.*

The Working Men's Dwellings Act, 1874.

Borough of ———.                      Transfer No. ———.                      (Lease No. ———.)

*A. B.* of ——— (herein referred to as the assignor) by virtue and in pursuance of the above-mentioned Act, and in consideration of ——— paid to him by *C. D.* of ———, hereby assigns to the said *C. D.* (herein referred to as the assignee), his executors and administrators, the site comprised in the within-written lease (a) [or the lease No. ——— under the said Act, dated the ——— day of ———, 187— (b)], with the appurtenances, and with the dwelling and other buildings thereon, for the residue of the term of ——— years, at the rent and subject to the stipulations and conditions at and subject to which that site is held immediately before the execution of this assignment.

And the assignee for himself, his executors and administrators, covenants with the assignor, his executors and administrators, that the assignee, his executors or administrators, will pay the yearly rent and observe and perform the stipulations and conditions aforesaid, and will at all times keep the assignor, his executors and administrators, indemnified in respect thereof.

In witness whereof, &c., this ——— day of ———, 187—.

<i>A. B.</i>	L.S.)
<i>C. D.</i>	(L.S.)

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(a) [In case of assignment by endorsement.]

(b) [In case of assignment by separate deed.]

# GENERAL RULES, 1872,

MADE BY

SIR COLIN BLACKBURN, KNIGHT, one of the JUSTICES of the QUEEN'S BENCH, SIR HENRY SINGER KEATING, KNIGHT, one of the JUSTICES of the COMMON PLEAS, and SIR ANTHONY CLEASBY, KNIGHT, one of the BARONS of the EXCHEQUER; the JUDGES for the time being on the rota for the trial of ELECTION PETITIONS IN ENGLAND, pursuant to the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125).

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1. The presentation of a municipal election petition shall be made by leaving it at the office of the master for the time being nominated by the Chief Justice of the Common Pleas, under the Parliamentary Elections Act, 1868, and such master or his clerk shall (if required) give a receipt which may be in the following form:—

Received on the — day of — at the master's office a petition touching the election of *A.B.*, alderman, councillor, [*&c., as the case may be*] for the borough of — purported to be signed by [*insert the names of petitioners*].

*C.D.*, Master's Clerk.

With the petition shall also be left a copy thereof for the master to send to the town clerk, pursuant to section 13, sub-section (1), of the Municipal Elections Act.

2. A municipal election petition shall contain the following statements:—

- (1). It shall state the right of the petitioner or petitioners to petition within section 13, sub-section (1), of the Act:
- (2). It shall state the holding and result of the election, and shall briefly state the facts and grounds relied on to sustain the prayer.

3. The petition shall be divided into paragraphs, each of which, as nearly as may be, shall be confined to a distinct portion of the subject, and every paragraph shall be numbered consecutively, and no costs shall be allowed of drawing or copying any petition not substantially in compliance with this rule, unless otherwise ordered by the Court of Common Pleas or a judge at chambers.

4. The petition shall conclude with a prayer, as for instance, that some specified person should be declared duly returned or elected, or that the election should be declared void, or that a return may be enforced (as the case may be), and shall be signed by all the petitioners.

5. The following form, or one to the like effect, shall be sufficient :—  
In the Common Pleas.

The Municipal Elections Act, 1872.

Election for [*state the place and office for which election held*] holden on the — day of — A.D.

The petition of A. of — [*or of A. of —, and B. of — as the case may be*] whose names are subscribed.

1. Your petitioner A. is a person who voted [*or had a right to vote, as the case may be*], at the above election, [*or was a candidate at the above election*]; and your petitioner B. [*here state in like manner the right of each petitioner.*]

2. And your petitioners state that the election was holden on the — day of — A.D. —, when A.B., C.D., and E.F., were candidates, and that A.B. and C.D. have been in the usual manner declared to be duly elected.

3. And your petitioner say that [*here state the facts and grounds on which the petitioner's rely.*]

Wherefore your petitioners pray that it may be determined that the said A.B. was not duly elected, and that the election was void [*or that the said E.F. was duly elected and ought to have been returned, or as the case may be*].

(Signed, A.  
B.)

6. Evidence need not be stated in the petition, but the Court of Common Pleas or a judge at chambers may order such particulars as may be necessary to prevent surprise and unnecessary expense, and to insure a fair and effectual trial in the same way as in ordinary proceedings in the Court of Common Pleas, and upon such terms as to costs and otherwise as may be ordered.

7. When a petitioner claims the office for an unsuccessful candidate, alleging that he had a majority of lawful votes, the party complaining of or defending the election shall, six days before the day appointed for trial, deliver to the master and also at the address, if any, given by the petitioners and respondent, as the case may be, a list of the votes intended to be objected to, and of the heads of objection to each such vote, and the master shall allow inspection and office copies of such lists to all parties concerned; and no evidence shall be given against the validity of any vote, nor upon any head of objection not specified in the list, except by leave of the Court of Common Pleas or a judge at chambers, upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs, as may be ordered.

8. When the respondent in a petition under the Act complaining of an undue election, and claiming the office for some person, intends to give evidence to prove that the election of such person was undue, pursuant to the 15th section of the Act, sub-section (9), such respondent shall, six days before the day appointed for trial, deliver to the master, and also at the address, if any, given by the petitioner, a list of the objections to the election upon which he intends to rely, and the master shall allow inspection and office copies of such lists to all parties concerned; and no evidence shall be given by a respondent of any objection to the election not specified in the list, except by leave of the Court of Common Pleas or a judge at chambers, upon such terms as to amendments of the list, postponement of the inquiry, and payment of costs, as may be ordered.

9. With the petition petitioners shall leave at the office of the master a writing, signed by them or on their behalf, giving the name of some person entitled to practise as an attorney in the Court of Common Pleas, whom they authorize to act as their agent, or stating that they act for themselves, as the case may be, and in either case giving an address, within three miles from the General Post Office, at which notices addressed to them may be left: and if no such writing be left or address given, then notice of objection to the recognizances, and all other notices and proceedings may be given by sticking up the same at the master's office.

10. Any person elected to any municipal office may at any time after he is elected send or leave at the office of the master a writing, signed by him or on his behalf, appointing a person entitled to practise as an attorney in the Court of Common Pleas, to act as his agent in case there should be a petition against him, or stating that he intends to act for himself, and in either case giving an address within three miles from the General Post Office at which notices may be left, and in default of such writing being left in a week after service of the petition, notices and proceedings may be given and served respectively by sticking up the same at the master's office.

11. The master shall keep a book or books at his office in which he shall enter all addresses and the names of agents given under either of the preceding rules, which book shall be open to inspection by any person during office hours.

12. The master shall, upon the presentation of the petition, forthwith send a copy of the petition to the town clerk, pursuant to section 13 of the Act, sub-section (1), and shall therewith send the name of the petitioner's agent, if any, and of the address, if any, given as prescribed, and also of the name of the respondent's agent, and the address, if any, given as prescribed, and the town clerk shall forthwith publish those particulars along with the petition.

The cost of publication of this and any other matter required to be published by the town clerk shall be paid by the petitioner or person moving in the matter, and shall form part of the general costs of the petition.

13. The time for giving notice of the presentation of a petition and of the nature of the proposed security, shall be five days, exclusive of the day of presentation.

14. Where the respondent has named an agent or given an address, the service of a municipal election petition may be by delivery of it to the agent, or by posting it in a registered letter to the address given at such time that, in the ordinary course of post, it would be delivered within the prescribed time.

In other cases the service may be personal on the respondent, unless a judge at chambers on an application made to him not later than five days after the petition is presented on affidavit, showing what has been done, shall be satisfied that all reasonable effort has been made to effect personal service and cause the matter to come to the knowledge of the respondent, in which case the judge may order that what has been done shall be

considered sufficient service, subject to such conditions as he may think reasonable.

15. In case of evasion of service the sticking up a notice in the office of the master of the petition having been presented, stating the petitioner, the prayer, and the nature of the proposed security, shall be deemed equivalent to personal service if so ordered by a judge.

16. The deposit of money by way of security for payment of costs, charges, and expenses payable by the petitioner, shall be made by payment into the Bank of England to an account to be opened there by the description of "The Corrupt Practices Municipal Elections Act, 1872, Security Fund," which shall be vested in and drawn upon from time to time by the chief justice of the Common Pleas for the time being, for the purposes for which security is required by the said Act, and a bank receipt or certificate for the same shall be forthwith left at the master's office (a).

17. The master shall file such receipt or certificate, and keep a book open to inspection of all parties concerned, in which shall be entered from time to time the amount and the petition to which it is applicable.

18. The recognizance as security for costs may be acknowledged before a judge at chambers or the master in town, or a justice of the peace in the country.

There may be one recognizance acknowledged by all the sureties, or separate recognizances by one or more, as may be convenient.

19. The recognizance shall contain the name and usual place of abode of each surety, with such sufficient description as shall enable him to be found or ascertained, and may be as follows:—

Be it remembered that on the — day of —, in the year of our Lord 18 —, before me [*name and description*] came A. B., of [*name and description as above prescribed*] and acknowledged himself [*or severally acknowledged themselves*] to owe to our Sovereign Lady the Queen the sum of five hundred pounds [*or the following sums*], (that is to say), the said C. D. the sum of £—, the said E. F. the sum of £—, the said G. H. the sum of £—, and the said J. K. the sum of £—, to be levied on his [*or their respective*] goods and chattels, land and tenements, to the use of our said Sovereign Lady the Queen, her heirs and successors.

The condition of this recognizance is, that if [*here insert the names of all the petitioners, and if more than one, add, or any of them*] shall well and truly pay all costs, charges and expenses in respect of the election petition signed by him [*or them*] relating to the [*here insert the name of the borough*] which shall become payable by the petitioner [*or petitioners, or any of them*], under the Corrupt Practices Municipal Elections Act, 1872, to any person or persons, then this recognizance to be void, otherwise to stand in full force.

Signed, [*Signature of sureties.*]

Taken and acknowledged by the above-named [*name of sureties*] on the — day of — at —

Before me, C. D.,

A justice of the peace [*or as the case may be.*]

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(a) See Additional General Rules, *post*, cclxiii.

20. The recognizance or recognizances shall be left at the master's office, by or on behalf of the petitioner in like manner as before prescribed for the leaving of a petition forthwith after being acknowledged.

21. The time for giving notice of any objection to a recognizance under the 13th section of this Act, sub-section (4), shall be within five days from the date of service of the notice of the petition and of the nature of the security, exclusive of the day of service.

22. An objection to the recognizance must state the ground or grounds thereof, as that the sureties, or any and which of them, are insufficient, or that a surety is dead, or that he cannot be found, or that a person named in the recognizance has not duly acknowledged the same.

23. Any objection made to the security shall be heard and decided by the master, subject to appeal within five days, to a judge, upon summons taken out by either party to declare the security sufficient or insufficient.

24. Such hearing and decision may be either upon affidavit or personal examination of witnesses, or both, as the master or judge may think fit.

25. If by order made upon such summons the security be declared sufficient, its sufficiency shall be deemed to be established within the meaning of the 13th section of the said Act, and the petition shall be at issue.

26. If by order made upon such summons an objection be allowed and the security be declared insufficient, the master or judge shall in such order state what amount he deems requisite to make the security sufficient, and the further prescribed time to remove the objection by deposit shall be within five days from the date of the order, not including the day of the date, and such deposit shall be made in the manner already prescribed.

27. The costs of hearing and deciding the objections made to the security given shall be paid as ordered by the master or judge, and in default of such order shall form part of the general costs of the petition.

28. The costs of hearing and deciding an objection upon the ground of insufficiency of a surety or sureties, shall be paid by the petitioner, and a clause to that effect shall be inserted in the order declaring its sufficiency or insufficiency, unless at the time of leaving the recognizance with the master there be also left with the master an affidavit of the sufficiency of the surety or sureties sworn by each surety before a justice of the peace, which affidavit any justice of the peace is hereby authorized to take, or before some person authorized to take affidavits in the Court of Common Pleas, that he is seised or possessed of real or personal estate, or both, above what will satisfy his debts, of the clear value of the sum for which he is bound by his recognizance, which affidavit may be as follows:—

In the Common Pleas.

Corrupt Practices (Municipal Elections) Act, 1872.

I, A. B., of [*as in recognizance*] make oath and say that I am seised or possessed of real [*or personal*] estate above what will satisfy my debts, of the clear value of —.

Sworn, &c.

29. The order of the master for payment of costs shall have the same force as an order made by a judge, and may be made a rule of the Court of Common Pleas, and enforced in like manner as a judge's order.

30. The master shall make out the municipal election list. In it he shall insert the names of the agents of the petitioners and respondents, and the addresses to which notices may be sent, if any. The list may be inspected at the master's office at any time during office hours, and shall be put up for that purpose upon a notice board appropriated to proceedings under the said Act, and headed "Municipal Election List."

31. The time of the trial of each municipal election petition shall be fixed by the election judges on the rota, or any one of them, who shall signify the same to the master, and notice thereof shall be given in writing by the master by sticking notice up in his office, sending one copy by post to the address given by the petitioner, another to the address given by the respondent, if any, and a copy by the post to the town clerk of the borough to which the petition relates, fifteen days before the day appointed for the trial.

The town clerk shall forthwith publish the same in the borough.

32. The sticking up of the notice of trial at the office of the master shall be deemed and taken to be notice in the prescribed manner within the meaning of the Act, and such notice shall not be vitiated by any miscarriage of or relating to the copy or copies thereof to be sent as already directed.

33. The notice of trial may be in the following form :—

Corrupt Practices (Municipal Election) Act, 1872.

Election petition of — borough of —.

Take notice that the above petition [*or petitions*] will be tried at — on the — day of — and on such other subsequent days as may be needful.

Dated the — day of —.

Signed by order,

A. B.,

The master appointed under the above Act.

34. A judge may from time to time, by order made upon the application of a party to the petition, or by notice in such form as the judge may direct to be sent to the town clerk, postpone the beginning of the trial to such day as he may name, and such notice when received shall be forthwith made public by the town clerk.

35. In the event of the barrister to whom the trial of the petition is assigned not having arrived at the time appointed for the trial, or to which the trial is postponed, the commencement of the trial shall *ipso facto* stand adjourned to the ensuing day, and so from day to day.

36. No formal adjournment of the court for the trial of a municipal election petition shall be necessary, but the trial is to be deemed adjourned, and may be continued from day to day until the inquiry is concluded.

37. The application to state a special case may be made by rule in the

Court of Common Pleas when sitting, or by a summons before a judge at chambers, upon hearing the parties.

38. The title of the court held for the trial of a municipal election petition, may be as follows:—

“Court for the trial of a municipal election petition for the borough of [or — as may be] between — petitioner and — respondent,” and it shall be sufficient so to entitle all proceedings in that court.

39. An officer shall be appointed for each court for the trial of a municipal election petition by the election judges, at the time that they assign the petition to the barrister; such officer shall attend at the trial in like manner as the clerks of assize and of arraigns attend at the assizes.

Such officer may be called the registrar of that court. He, by himself, or in case of need, his sufficient deputy, shall perform all the functions incident to the officer of a court of record, and also such duties as may be prescribed to him.

40. The reasonable costs of any witness shall be ascertained by the registrar of the court, and the certificate allowing them shall be under his hand, unless the court shall otherwise order.

41. The order of the court to compel the attendance of a person as a witness may be in the following form:—

Court for the trial of a municipal election petition for [complete the title of the court] the — day of —.

To A.B. [describe the person]. You are hereby required to attend before the above court at [place] on — the — day of — at the hour of [or forthwith, as the case may be], to be examined as a witness in the matter of the said petition, and to attend the said court until your examination shall have been completed.

As witness my hand,

A.B.,

The barrister to whom the trial of the said petition is assigned.

42. In the event of its being necessary to commit any person for contempt, the warrant may be as follows:—

At a court holden on — at — for the trial of a municipal election petition for the borough of —, before A.B., one of the barristers appointed for the trial of municipal election petitions, pursuant to “The Corrupt Practices (Municipal Elections) Act, 1872.”

Whereas C.D. has this day been guilty, and is by the said court adjudged to be guilty, of a contempt thereof. The said court does therefore sentence the said C.D. for his said contempt to be imprisoned in the — gaol for — calendar months [or as may be], and to pay to our Lady the Queen a fine of £—, and to be further imprisoned in the said gaol until the said fine be paid. And the court further orders that the sheriff of the borough [if any, or as the case be], and all constables and officers of the peace of any county, borough, or place where the said C.D. may be found, shall take the said C.D. into custody and convey him to the said gaol, and there deliver him into the custody of the gaoler thereof, to undergo his said sentence. And the court further orders the said gaoler to receive the said C.D. into his custody, and that he shall be detained in the said gaol in pursuance of the said sentence.

A.B.

Signed the — day of —

A.B.



43. Such warrant may be made out and directed to the sheriff or other person having the execution of process of the superior courts, as the case may be, and to all constables and officers of the peace of the county, borough, or place where the person adjudged guilty of contempt may be found, and such warrant shall be sufficient without further particularity, and shall and may be executed by the persons to whom it is directed or any or either of them.

44. All interlocutory questions and matters, except as to the sufficiency of the security, shall be heard and disposed of before a judge, who shall have the same control over the proceedings under the Corrupt Practices (Municipal Elections) Act, 1872, as a judge at chambers in the ordinary proceedings of the superior courts, and such questions and matters shall be heard and disposed of then by any judge at chambers.

45. Notice of an application for leave to withdraw a petition shall be in writing and signed by the petitioners or their agent.

It shall state the ground on which the application is intended to be supported.

The following form shall be sufficient :—

Corrupt Practices (Municipal Elections) Act, 1872.

Borough of ——— petition of [*state petitioners*] presented ——— day of ———.

The petitioner proposes to apply to withdraw his petition upon the following ground [*here state the ground*], and prays that a day may be appointed for hearing his application.

Dated this ——— day of ———.

(Signed)

46. The notice of application for leave to withdraw shall be left at the master's office.

47. A copy of such notice of the intention of the petitioner to apply for leave to withdraw his petition shall be given by the petitioner to the respondent, and to the town clerk, who shall make it public in the borough to which it relates, and shall be forthwith published by the petitioner in at least one newspaper circulating in the place.

The following may be the form of such notice :—

Corrupt Practices (Municipal Elections) Act, 1872.

In the election petition for ——— in which ——— is petitioner and ——— respondent,

Notice is hereby given, that the above petitioner has on the ——— day of ——— lodged at the master's office notice of an application to withdraw the petition, of which notice the following is a copy [*set it out*].

And take notice that by the rule made by the judges, any person who might have been a petitioner in respect of the said election may, within five days after publication by the town clerk of this notice, give notice in writing of his intention on the hearing to apply for leave to be substituted as a petitioner.

(Signed)

48. Any person who might have been a petitioner in respect of the election to which the petition relates, may, within five days after such notice is published by the returning officer, give notice, in writing, signed by him or on his behalf, to the master of his intention to apply at the hearing to be substituted for the petitioner, but the want of such notice shall not defeat such application, if in fact made at the hearing.

49. The time and place for hearing the application shall be fixed by a judge, and whether before the Court of Common Pleas or before a judge, as he may deem advisable, but shall not be less than a week after the notice of the intention to apply has been given to the master as hereinbefore provided, and notice of the time and place appointed for the hearing shall be given to such person or persons, if any, as shall have given notice to the master of an intention to apply to be substituted as petitioners, and otherwise in such manner and at such time as the judge directs.

50. Notice of abatement of a petition, by death of the petitioner or surviving petitioner, under section 17, sub-section (5), of the said Act, shall be given by the party or person interested in the same manner as a notice of an application to withdraw a petition; and the time within which application may be made to the Court of Common Pleas or a judge at chambers, by motion or summons at chambers, to be substituted as a petitioner, shall be one calendar month, or such further time as upon consideration of any special circumstances the Court of Common Pleas or a judge at chambers may allow.

51. If the respondent dies, any person entitled to be a petitioner under the Act in respect of the election to which the petition relates, may give notice of the fact in the borough by causing such notice to be published in at least one newspaper circulating therein, if any, and by leaving a copy of such notice signed by him or on his behalf with the town clerk, and a like copy with the master.

52. The manner and time of the respondent's giving notice that he does not intend to oppose the petition, shall be by leaving notice thereof in writing at the office of the master signed by the respondents six days before the day appointed for trial exclusive of the day of leaving such notice.

53. Upon such notice being left at the master's office, the master shall forthwith send a copy thereof by the post to the petitioner or his agent, and to the town clerk, who shall cause the same to be published in the borough.

54. The time for applying to be admitted as a respondent in either of the events mentioned in the 18th section of the Act shall be within ten days after such notice is given as hereinbefore directed, or such further time as the Court of Common Pleas or a judge at chambers may allow.

55. Costs shall be taxed by the master, or at his request by any master of a superior court, upon the rule of court or judge's order by which the costs are payable, and costs when taxed may be recovered by execution issued upon the rule of court ordering them to be paid, or if payable by the order of a judge, then by making such order a rule of court in the ordinary way and issuing execution upon such rule against the person by whom the costs are ordered to be paid, or in case there be money in the bank available for the purpose, then to the extent of such money by order of the chief justice of the Common Pleas for the time being, upon a duplicate of the rule of court.

The office fees payable for inspection, office copies, enrolment, and other proceedings under the Act and these rules, shall be the same as those payable, if any, for like proceedings according to the present practice of the Court of Common Pleas.

56. An agent employed for the petitioner or respondent shall forthwith leave written notice at the office of the master, of his appointment to act as such agent, and service of notices and proceedings upon such agent, shall be sufficient for all purposes.

57. No proceeding under the Corrupt Practices (Municipal Elections) Act, 1872, shall be defeated by any formal objection.

58. Any rule made or to be made in pursuance of the Act, if made in term, time shall be published by being read by the master in the Court of Common Pleas, and if made out of term by a copy thereof being put up at the master's office.

Dated the 20th day of November, 1872.

COLIN BLACKBURN,  
H. S. KEATING,  
A. CLEASBY.

*The Judges for the time being on the rota for the trial of election petitions under the provisions of the Parliamentary Elections Act, 1868.*

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## ADDITIONAL GENERAL RULES.

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1. All claims at law or in equity to money deposited or to be deposited in the Bank of England for payment of costs, charges, and expenses payable by the petitioners pursuant to the 16th general rule, made the 20th day of November, 1872, by the judges for the trial of election petitions in England, shall be disposed of by the Court of Common Pleas or a judge at chambers.

2. Money so deposited shall, if, and when the same is no longer needed for securing payment of such costs, charges, and expenses, be returned or otherwise disposed of as justice may require, by rule of the Court of Common Pleas or order of a judge at chambers.

3. Such rule or order may be made after such notice of intention to apply, and proof that all just claims have been satisfied or otherwise sufficiently provided for, as the Court of Common Pleas or judge at chambers may require.

4. The rule or order may direct payment either to the party in whose name the same is deposited, or to any person entitled to receive the same.

5. Upon such a rule or order being made, the amount may be drawn for by the chief justice of the Common Pleas for the time being.

6. The draft of the chief justice of the Common Pleas for the time being shall in all cases be a sufficient warrant to the Bank of England for all payments made thereunder.

7. The barrister engaged may appoint a proper person to act as crier and officer of the court.

8. The shorthand writer to attend at the trial of a petition shall be the shorthand writer to the House of Commons for the time being, or his deputy, and the master shall send a copy of the notice of trial to the said shorthand writer to the House of Commons.

COLIN BLACKBURN,  
H. S. KEATING,  
A. CLEASBY.

*Judges for the time being on the rota for the trial of election petitions  
in England, pursuant to the Parliamentary Elections Act, 1868.*

Dated the 10th day of December, 1872.

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# APPENDIX.

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## PART II. (a)

9 ANNE, CAP. XX.

An Act for rendering the proceedings upon writs of *Mandamus*, and informations in the nature of a *Quo Warranto*, more speedy and effectual; and for the more easy trying and determining the rights of offices and franchises in Corporations and Boroughs (b).

[A. D. 1710.]

*Returns to writs of mandamus out of the Queen's Bench, &c., shall be made to the first writ.*] Whereas divers persons have of late illegally intruded themselves into, and have taken upon themselves to execute the office of mayors, bailiffs, portreeves, and other offices, within cities, towns corporate, boroughs, and places, within that part of Great Britain called England and Wales; and where such offices were annual offices, it hath been found very difficult, if not impracticable, by the laws now in being, to bring to a trial and determination the right of such persons to the said offices, within the compass of the year; and where such offices were not annual offices, it hath been found difficult to try and determine the right of such persons to such offices, before they have done divers acts in their said offices, prejudicial to the peace, order, and good government within such cities, towns corporate, boroughs, and places, wherein they have respectively acted: and whereas divers persons, who had a right to such offices, or to be burgesses or freemen of such cities, towns corporate, boroughs, or places have either been illegally turned out of the same, or have been refused to be admitted thereto, having in many of the said cases no other remedy to procure themselves to be respectively admitted, or restored to their said offices or franchises of being burgesses or freemen, than by writs of *mandamus*, the proceedings on which are very dilatory and expensive, whereby great mischiefs have already ensued, and more are likely to ensue, if not timely prevented; for remedy, whereof, be it enacted, &c.

II. *As soon as the return is made, the prosecutor in such writ may plead, &c., to which the person returning may reply; &c.*

III. *Persons against whom damages shall be recovered, not liable to other actions.*

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(a) See the Preface.

(b) See 35 & 36 Vict. c. 60 (the Corrupt Practices Municipal Elections Act), *ante*, p. ccxxix, by which the provisions of this Act are in great part rendered inoperative.

IV. *Informations in the nature of quo warranto may be exhibited against such as intrude, &c., into offices, &c.*

V. *Judgment of ouster shall be given against persons found guilty of such usurpation, &c., and the relator shall recover costs : if judgment be given for the defendant, he shall have costs against the relator.*

VI. *The court may allow a convenient time to return (to) a mandamus (&c.), plead, reply, &c.*

VII. *4 Anne, c. 16, and all the statutes of Jeofayles shall be extended to writs of mandamus, &c.*

VIII. *No annual returning officer shall be re-elected (a).*

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#### 11 GEO. 1, CAP. IV.

An Act for preventing the inconveniences arising for want of elections of Mayors, or other chief Magistrates of Boroughs or Corporations being made upon the days appointed by charter or usage for that purpose, and directing in what manner such elections shall be afterwards made.

WHEREAS in many cities, boroughs, and towns corporate within that part of Great Britain called England, Wales, and Berwick-upon-Tweed, the election of the mayor, bailiff or bailiffs, or other chief officer or officers is by charter or ancient usage confined to a particular day or time without any provision how to act or proceed in case no election be then made; and it frequently happens, that by such charter or usage particular acts are required to be done at certain times in order to and for the completing of such elections, and by the contrivance or default of the person or persons, who ought to hold the court, or preside in the assembly where such elections are to be made, or such acts to be done, or by accident, it hath sometimes happened, and may frequently do so, if not timely prevented, that no courts or assemblies have been held, or elections made, or such acts done within the time fixed for that purpose; in which cases, if elections of such officers could not afterwards be made or completed, or, in consequence of such omission, the corporation should be dissolved, great mischiefs might ensue : for remedy and prevention whereof, be it enacted, &c.

*Where election for mayors or other chief officers shall not be made on the days appointed by charter or usage ; corporation not dissolved or disabled from electing ; but may meet together at the town-hall, &c., on the day after and proceed to election.—Mayor, &c., absenting, the nearest in place may hold the court.]* That if in any city, borough, or town corporate, within that part of Great Britain called England, Wales, and Berwick-upon-Tweed, no election shall be made of the mayor, bailiff or bailiffs, or other chief officer or officers of such city, borough, or town corporate, upon the day, or within the time appointed by charter or usage for such election ; or such election being made shall afterwards become void, whether such

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(a) Repealed by 3 & 4 Vict. c. 47, post, p. cclxxxiv.

omission or avoidance shall happen through the default of the officer or officers who ought to hold the court, or preside where such election is to be made, or by any accident or other means whatsoever, the corporation shall not thereby be deemed or taken to be dissolved or disabled from electing such officer or officers for the future; but in any case, where no election shall be made as aforesaid, it shall and may be lawful for the members or persons of such city, borough, or corporation, who have right to vote, or be present at, or to do any other act necessary to be done, in order to or for the completing of such election; and they or such of them as shall not be hindered by any reasonable impediment or excuse, are hereby required respectively to meet or assemble together in the town-hall, or other usual place of meeting for making such election, within such city, borough, or town corporate, upon the day next after the expiration of the time within which such election ought to have been made, unless such day shall happen to be Sunday, and then upon the Monday following, between the hours of ten in the morning and two in the afternoon of the same day; and that the members or persons having right to vote at, or to do any other act necessary to be done in order to such election, or such of them as shall be so assembled or met together, shall forthwith proceed to the election of a mayor, bailiff or bailiffs, or other chief officer or officers for such city, borough, or corporation, and to do every act necessary to be done in order to or for the completing of such election, in such manner as was usual in, or in order to the election of such officer or officers, upon the day, or within the time appointed by charter or usage for such election; and in case, upon such day of meeting hereby appointed for such election, the mayor, bailiff or bailiffs, or other proper officer or officers, who ought to have held the court, or presided at the assembly for such election, or doing any other act necessary to be done in order to such election if the same had been made or done on the day fixed, or within the time limited by charter or usage for that purpose, shall be absent, then such other person, having a right to vote, being the nearest then present in place or office to the person or persons so absenting himself or themselves, shall hold the court, or preside in the meeting or assembly hereby appointed, and shall have the same power and authority in all respects therein, as belongs to the mayor, bailiff or bailiffs, or other chief officer or officers of the same city, borough, or town corporate, at any court or assembly for the election of officers for such place, or for doing any other act necessary to be done in order to such election.

II. *If no election be made or the election become void, King's Bench may award a mandamus for electing (h).—Six days' public notice to be given of the election.*] And it is hereby further enacted by the authority aforesaid, that if it shall happen that in any city, borough, or town corporate within that part of Great Britain called England, Wales, and Berwick-upon-Tweed, no election shall be made of the mayor, bailiff or bailiffs, or other chief officer or officers of such city, borough, or town corporate upon the day, or within the time appointed by charter or usage for that purpose, and that no election of such officer or officers shall be made pursuant to the directions hereinbefore prescribed, or such election being made shall afterwards become void, as aforesaid, in every such case it shall and may be lawful for His Majesty's Court of King's Bench, upon motion to be made in the said court to award a writ or writs of *mandamus*, requiring the members or persons

of such city, borough, or town corporate, having a right to vote at or to do any other act necessary to be done in order to such election respectively, to assemble themselves upon a day and at a time to be prefixed in such writ or writs, and to proceed to the election of a mayor, bailiff or bailiffs, or other chief officer or officers, as the case shall require, and to do every act necessary to be done in order to such election, or to signify to the said court good cause to the contrary; and thereupon to cause such proceedings to be had and made, as in other cases of writs of *mandamus*, granted by the said court for election of officers of corporations, and of the day and time appointed in and by any such writ or writs of *mandamus* for holding such assembly, public notice in writing shall, by such person as the said court shall appoint, be affixed in the market place, or some other public place within such city, borough, or town corporate, by the space of six days before the day so appointed; and such officer or other person respectively, shall preside in such assembly, as ought to have presided at the election of such mayor, bailiff or bailiffs, or other chief officer or officers, or at the doing any other act necessary to be done in order to such election, in case the same had been made or done upon the day hereinbefore prescribed for that purpose.

III. *Where mayors, &c., are to be nominated or sworn at a court-leet &c., and in default of the lord or steward, no court be held; King's Bench may award a mandamus for holding the court-leet.*] And whereas in certain boroughs and towns corporate within that part of Great Britain called England, Wales, and Berwick-upon-Tweed, the mayor, bailiff or bailiffs, or other chief officer or officers, is or are to be nominated, elected, or sworn at a court-leet, or view of frank-pledge, or some other court, and by reason of contrivance or default of the lord, or his steward, or such other officer, by or before whom such court ought to be held, in not holding the same or by some accident it hath happened, and may hereafter happen, that no due nomination, election, or swearing of such mayor, bailiff or bailiffs, or other chief officer or officers, hath been or shall be had or made; be it further enacted by the authority aforesaid, that in every such case it shall and may be lawful to and for His Majesty's Court of King's Bench, upon motion to be made in the said court, to award a writ of *mandamus*, requiring the lord, or his steward, or other officer, by or before whom such court ought to be held, to hold, or cause to be holden such court leet, or other court, and to do every other act necessary to be done by him in order to such nomination, election, or swearing, at such day and time as shall be for that purpose judged proper by the said Court of King's Bench, and shall be appointed in such writ, or to signify to the said court good cause to the contrary, and thereupon to cause such proceedings to be had and made, as in other cases of writs of *mandamus* granted by the said court for holding of any court, and of the day and time appointed in and by any such writ of *mandamus* for holding such court, public notice in writing shall by such person as the said Court of King's Bench shall appoint, be affixed in the market place, or some other public place within such borough or town corporate, by the space of six days before the day so appointed: and where a nomination of persons in order to the election of any such mayor, bailiff or bailiffs, or other chief officer or officers, is to be made at such court leet, or other court, in every such case, after such nomination made, all and every other act and acts necessary to be done in order to such election, shall be had, made, and done at such assembly, and in such manner and form as the same ought to have been had, made, and done in case such election had been made upon the day next after the expiration of the time prescribed for



such election, by the charter or usage of such<sup>1</sup> borough or corporation, according to the directions hereinbefore mentioned.

IV. *Mayors, &c., so elected shall take the oaths (a) before the presiding officer.*] And be it further enacted, by the authority aforesaid, that the mayor, bailiff or bailiffs, or other chief officer or officers, who shall be elected pursuant to the directions of this Act, shall take the oath or oaths by law required at the time of his<sup>1</sup> admission into such office before such officer as shall preside at such election in pursuance of this Act, who is hereby authorized and required to administer such oath or oaths; and shall have the same privileges, precedence, powers, and authorities, in all respects, as any mayor, bailiff or bailiffs, or other chief officer or officers of the same city, borough, or corporation, elected on the days or time fixed by charter or usage for that purpose ought to have or enjoy.

V. *No such election valid, unless as great a number be present and concur as required by charter, &c.*] Provided always, that no such election nor any act done in order thereunto, shall be valid, unless as great a number of persons, having right to be present at, and vote therein, shall be present at the assembly holden for such purpose, and concur therein, as would respectively have been necessary to be present, and concur in such election or act, in case the same had been made or done upon the day or within the time appointed for that purpose by the charter or usage of such city, borough, or corporation; saving only that the presence of the mayor, bailiff or bailiffs, or other chief officer or officers who ought to preside, shall not be necessary.

VI. *Mayors absenting themselves, &c., shall suffer imprisonment for six months, &c.*] And be it further enacted by the authority aforesaid, that if any mayor, bailiff or bailiffs, or other chief officer or officers of any city, borough, or town corporate, shall voluntarily absent himself or themselves from, or knowingly and designedly prevent or hinder the election of any other mayor bailiff, or other chief officer in the same city, borough, or town corporate, upon the day, or within the time appointed by charter or ancient usage for such election, the person or persons so offending, being thereof lawfully convicted, shall, for every such offence, suffer imprisonment for the space of six months, without bail or mainprize, and shall be for ever disabled to take, hold, or exercise any office belonging to the same city, borough, or corporation.

VII. *No corporation dissolved or disabled by any omission already happened.*] And be it further enacted by the authority aforesaid, that no corporation shall be deemed or adjudged to be dissolved or disabled from electing a mayor, bailiff or bailiffs, or other chief officer or officers, by reason of any omission or default which hath already happened in not nominating, electing, or swearing a mayor, bailiff or bailiffs, or other chief officer or officers of such corporation, upon the day, or within the time limited for such nomination, election, or swearing, by the charter or usage of such corporation, or by reason of the absence of the mayor, bailiff or bailiffs, or other chief officer or officers, who ought to have presided at the assembly for such nomination, election, or swearing, or by reason of such election having become void, as aforesaid; but every such corporation shall be

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(a) See 5 & 6 Will. 4, c. 70, s. 50, *ante*, p. xxi; s. 104, *ante*, p. xlv; 6 & 7 Will. 4, c. 105, s. 3, *ante*, p. lxxv; 30 & 31 Vict. c. 75, *ante*, p. cxcvii; 31 & 32 Vict., c. 72, *ante*, p. ccx; and 34 & 35 Vict., c. 48, *ante*, p. ccv.

adjudged, deemed, and taken to be and to have been subsisting and capable of electing such officer or officers, to all intents and purposes; any such omission, absence, default, or avoidance, or any disability or forfeiture arising therefrom in anywise notwithstanding.

VIII. *This Act not to make void any charter.*] Provided always, that nothing herein contained shall extend or be construed to extend, invalidate or make void any charter heretofore granted to, and accepted by any city, borough, or town corporate, or any corporation within the same or any of them, or any election or acts had, made, or done in pursuance of any such charter (a).

IX. *Return to be made to the first writ of mandamus.*

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12 GEO. 3, CAP. XXI.

An Act for giving relief in proceedings upon writs of *Mandamus* for the admission of Freemen into Corporations; and for other purposes therein mentioned.

WHEREAS divers persons who have a right to be admitted citizens, burgesses, or freemen, of divers cities, towns corporate, boroughs, Cinque Ports, and places, within that part of Great Britain called England and Wales, being refused to be admitted thereto, have, in many cases no other ordinary remedy to procure themselves to be admitted to the franchises of being citizens, burgesses, or freemen, than by writs of *mandamus*, the proceedings on which are very dilatory and expensive; and although any such writ of *mandamus* is obeyed, the person applying is nevertheless put to great and unnecessary trouble, delay, and expense; and whereas by the laws now in being, in many cases, no provision is made for giving costs to the party suing out any such writ where the same is obeyed; for remedy whereof, be it enacted, &c.:

I. *Any person entitled to be admitted a citizen, &c., of any city and applying to the mayor, &c., for that purpose, giving him notice, specifying the nature of his claim, &c., if such mayor, &c., shall refuse to admit such person, and a mandamus shall issue for compelling his admission, the mayor to pay all costs (b).*

II. *Freemen to be admitted to inspect the entries of admission, &c., and to take copies thereof (c).—Mayor, bailiff, &c., denying inspection of such entries, or to give copies thereof, shall, for every refusal forfeit one hundred pounds (d), to be recovered by action of debt; to be commenced within one year after the cause shall have arisen.*

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(a) Remainder of section repealed by Statute Law Revision Act, 1867.

(b) The provisions of this section have been rendered in great part inoperative by the enactments in s. 5 of 5 & 6 Will. 4, c. 76, *ante*, p. vii.

(c) See 5 & 6 Will. 4, c. 76, s. 5, *as above*.

(d) See *Id.* s. 48, *ante* p. xx., where the penalty for such refusal is made fifty pounds.

## 32 GEO. 3, CAP. LVIII.

An Act for the Amendment of the Law in proceedings upon information in nature of *Quo Warranto*.

WHEREAS it would greatly tend to secure the freedom of election, and the quiet, tranquillity, and good order of cities, boroughs and towns corporate, if a certain reasonable limitation of time should be by law established, beyond which no member or officer of any city, borough, or town corporate, should be disturbed in the enjoyment or exercise of his office or franchise which he should have held and enjoyed for such time: be it enacted, &c.

I. *Defendants to informations in the nature of quo warranto for the exercise of any office, may plead the holding it six years or more, &c. (e).*

II. *Forfeiture of office within six years before information, may be replied to such plea.*

III. *Title derived under an election not to be affected on account of defect in the title of the person electing, if he was in the exercise of his office six years previous to the information.*

IV. *Officer having the custody of corporation records to permit any member thereof to inspect the books of admission of freemen, &c., on penalty of one hundred pounds.]* And be it further enacted by the authority aforesaid, that the mayor, bailiff, sheriff, town clerk, or other officer of any corporation, having the custody of, or power over, the records of the same, shall, upon the demand of any person, being an officer or member of such corporation, on the payment of one shilling, permit such person, on any day or days except Christmas day, Good Friday, and Sunday, between the hours of nine in the morning and three in the afternoon, to inspect the books and papers wherein the admission or swearing in of the freemen, burgesses, or other members or officers of such corporation, shall be entered, and to have copies or minutes of the admission, or the entry of swearing-in of any one or more of such freemen, burgesses, or other members or officers, upon paying sixpence for every one hundred words for writing the same; and if such mayor, bailiff, sheriff, town clerk, or other officer, shall refuse or deny to any person, hereby entitled to demand it, the inspection of such books or papers, or to have copies or minutes thereof as aforesaid, such mayor, bailiff, sheriff, town clerk, or other officer shall, for every such offence, forfeit and pay the sum of one hundred pounds, together with full costs of suit, to him, her, or them, who shall inform and sue for the same within one year after such offence committed, by action of debt, bill, plaint, or information, in any of His Majesty's courts of record at Westminster, wherein no essoin, protection, wager of law, nor more than one imparlance, shall be allowed.

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(e) This enactment is virtually repealed by s. 23 of 7 Will. 4, & 1 Vict. c. 78, *ante* p. lxxxv; see also 6 & 7 Vict. c. 89, s. 1, *ante*, p. cxi.; and 35 & 36 Vict. c. 60, *ante*, p. ccxxviii.

## 1 WILL. 4, CAP. XXI.

An Act to improve the proceedings in Prohibition and on Writs of *Mandamus* (a).  
[33th March, 1831.]

III (b). *The enactments of 9 Ann c. 20 (c), relating to returns to writs of mandamus therein mentioned, and the proceedings thereon, extended to all other writs of mandamus (d).*

IV. *For protection of certain officers to whom writs of mandamus are directed.*

V. *Proceedings not to abate by removal of officer.*

VI. *Costs to be in the discretion of the court (e).*

## 1 &amp; 2 WILL. 4, CAP. LVIII.

An Act to enable Courts of Law to give relief against adverse claims made upon persons having no interests in the subject of such claims.  
[20th October, 1831.]

VIII. *Upon any application under 1 Will. 4, c. 21 (f), and this Act, the court to exercise such powers and make such rules as are given by or mentioned in this Act.*

## 3 &amp; 4 WILL. 4, CAP. XC.

An Act to repeal an Act of the eleventh year of His late Majesty King George the Fourth, for the Lighting and Watching of parishes in England and Wales, and to make other provisions in lieu thereof (g).  
[28th August, 1833.]

1. *Recited Act repealed.*] Whereas an Act was passed in the eleventh year of the reign of His late Majesty King George the Fourth, intituled, *An Act to make provision for the lighting and watching of parishes in England*

(a) See 6 & 7 Vict. c. 67, *post*, and c. 89, s. 5, *ante*, p. cxii.

(b) Sects. 1 and 2 refer to proceedings in prohibition.

(c) *Ante*, p. ccliv.

(d) See *Fall v. Reginam*, 1 Q. B. 636.

(e) See *R. v. Newbury*, (*Mayor, &c.*), 1 Q. B. 751; S. C. 2 G. & D. 109; *R. v. Eastern Counties Railway*, 2 Q. B. 568, 579; *R. v. Scott*, 3 Dowl. (N. S.) 212; *R. v. Dartmouth* (*Mayor, &c.*), 2 *Id.* 980; *R. v. St. Pancras* (*Churchwardens, &c.*), *Id.* 95; *R. v. Bingham*, 4 Q. B. 877; *R. v. Cambridge* (*Mayor, &c.*), *Id.* 801; *R. v. West Riding* (*Justices*), 5 Q. B. 1; *R. v. Middlesex* (*Sheriff*), *Id.* 365; *R. v. Great Western Railway*, *Id.* 597; *R. v. Surrey* (*Justices*), 9 Q. B. 37 and *Reg. Gen. Q. B. E. T.* 6 Vict. 4 Q. B. 653, 3 G. & D. 612.

(f) *Supra*.

(g) See 5 & 6 Will. 4. c. 76, s. 88, *ante*, p. xxxvii, and 10 & 11 Vict. c. 34; see also *R. v. Marriott*, 12 A. & E. 779; *R. v. Whipp*, 4 Q. B. 141; S. C. 3 G. & D. 372; *Beechey v. Quentery*, 10 M. & W. 65.

*and Wales (a): and whereas doubts have arisen as to the construction of some of the provisions of the said Act, and it is expedient that the said Act should be repealed, and that other provisions should be substituted in lieu thereof: be it therefore enacted, &c., that from and after the passing of this Act the said Act passed in the eleventh year of the reign of His said late Majesty King George the Fourth shall be and the same is hereby repealed.*

*II. Such repeal not to affect the proceedings under that Act previous to the passing of this Act.*

*III. Inspectors under former Act to continue to Act until others appointed.*

*IV. Act applicable to all parishes.*

*V. On application of three rated inhabitants, churchwardens to convene a meeting in vestry to determine whether the provisions of this Act shall be adopted.*

*VI. Chairman to be elected, who shall determine any controversies.*

*VII. Chairman to read requisition, and require persons to determine whether Act shall be adopted.*

*VIII. If meeting determine to proceed, the provisions of this Act shall thenceforth take effect.*

*IX. Inhabitants to fix amount of money to be raised. Poll may be demanded as to adoption of Act.*

*X. Notice of poll to be given by churchwardens. Form of notice.*

*XI. Form of declaration.*

*XII. Churchwardens to examine the votes, and declare whether two-thirds of them are in favour of adopting this Act.*

*XIII. Ratepayers may inspect votes.*

*XIV. No person to vote unless he has been rated one year.*

*XV. Notice of adoption of this Act. Act may be abandoned.*

*XVI. If meeting determine against adopting this Act.*

*XVII. Mode of electing inspectors.*

*XVIII. At the end of twelve months the inspectors to give notice to churchwardens that they are ready to produce their accounts, and churchwardens to call a meeting for that purpose. Meetings in future years.*

*XIX. Inspectors at such meeting to produce accounts: one third of them to go out of office and others elected.*

*XX. Chairman to decide questions as to eligibility, &c.*

*XXI. How vacancies in the number of inspectors shall be filled up.*

*XXII. Inspectors to meet monthly.] And be it further enacted, that the inspectors for executing this Act in any parish shall meet on the first Monday in every month, at noon, at some convenient place or office pre-*

viously publicly notified; and at such monthly meeting it shall be lawful for any inhabitant rated to the relief of the poor of any such parish to appear there, and prefer any matter of complaint which he may think proper to make concerning any matter or thing done by force or in pursuance of or under pretence of the provisions of this Act.

XXIII. *Special meetings of inspectors.—Quorum.*] And be it further enacted, that such inspectors shall meet at all other times and so often as at any previous meeting shall be determined upon; and it shall be at all times competent for any one inspector, when three inspectors only shall have been appointed, and in all other cases for any two inspectors, by writing under his or their hands, to summon, upon at least forty-eight hours' notice, the inspectors for any special purpose therein named, and for such time as shall be therein named; and that at all meetings of such inspectors any number not less than one-third of the whole number when more than three inspectors shall have been appointed, and when only three inspectors shall have been appointed then not less than two inspectors, shall constitute a quorum for transacting business.

XXIV. *Inspectors to appoint officers during pleasure, and rent an office for the transaction of their business.*] And be it further enacted, that it shall be lawful for the said inspectors elected in any parish under this Act for the time being, and they are hereby authorized and required, to appoint, during pleasure, such treasurer and other officers as they shall think necessary for effecting the purposes of this Act, and to remove and to displace the same, and to hire and rent a sufficient office or house or room for holding their meetings and transacting their business, and also to appoint suitable salaries, wages, and allowances to and for such treasurer and other officers, and also to agree for a reasonable rent for such office or house or room, and to pay such salaries, wages, and allowances, and such rent, out of the monies received by the inspectors under the authority of this Act: provided nevertheless, that no person shall at the same time hold two offices or situations under the said inspectors.

XXV. *Security to be taken from treasurer.*] And be it further enacted, that it shall be lawful for the said inspectors, or any two or more of them, and they are hereby required, to take security from the treasurer to be appointed by virtue of this Act for the due execution of his office of treasurer, according to the true intent and meaning of this Act, which security shall be to the full amount of the sum likely to be in the hands of the said treasurer at any one time; and in case any such treasurer shall neglect or refuse, for the space of three weeks next after his appointment, to give or offer such security to the satisfaction of the said inspectors, then the appointment of every such person so neglecting or refusing shall be null and void to all intents and purposes, and the said inspectors shall, within three weeks then next, assemble and appoint some other fit and proper person to the office of treasurer, instead of the person so refusing or neglecting as aforesaid, and shall so assemble and appoint from time to time until security shall be given to their satisfaction as aforesaid.

XXVI. *Treasurers and officers to account.—Proceedings against officers neglecting to account.*] And be it further enacted, that every such treasurer and other officer appointed by virtue of this Act shall, under his respective hand, and at such time or times and in such manner as the said inspectors shall direct, deliver to the said inspectors, or such person as they shall

appoint, true and perfect accounts in writing of all matters and things committed to his charge by virtue of this Act, and also of all monies which shall have been by such officer received by virtue of or for the purposes of this Act, and of how much thereof shall have been expended and disbursed, and for what purposes, together with proper vouchers for such payments; and that every such officer shall pay all such monies as shall remain due from him to the treasurer for the time being, or to such person or persons as the said inspector (*sic*) shall appoint to receive the same; and if any such treasurer, officer, or other person shall refuse or neglect to make and render such account, or to produce and deliver up the vouchers relating to the same, or to make payments as aforesaid, or shall refuse or wilfully neglect to deliver to the said inspectors, or to such person or persons as they shall appoint to receive the same, within three days after being thereunto required by the said inspectors, by notice in writing under the hands and seals of any two or more of the said inspectors, given to or left at the last or usual place of abode of such officer, all books, papers, and writings in his custody or power relating to the execution of this Act, or to give satisfaction to the said inspectors or such other person or persons as aforesaid respecting the same, then and in every such case, upon complaint made by the said inspectors, or by such person or persons as they the said inspectors shall appoint for that purpose, of any such refusal or wilful neglect as aforesaid, to any justice of the peace, such justice may and he is hereby authorized and required to issue a summons under his hand and seal for the officer so refusing or neglecting to appear before two justices of the peace; and upon the said officer appearing, or having been so summoned and not appearing without some sufficient and reasonable excuse, or not being found, it shall be lawful for the said justices to hear and determine the matter in a summary way; and if upon confession of the party, or by the testimony of any credible witness or witnesses upon oath (which oath such justices are hereby empowered to administer), it shall appear to such justices that any monies remain due from such officer, such justices may and they are hereby authorized and required, upon nonpayment thereof, by warrant under their hands and seals, to cause such money to be levied by distress and sale of the goods and chattels of such officer, and if no goods and chattels of such officer shall be found sufficient to answer and satisfy the said money, and the charges of distraining and selling the said goods and chattels, or if it shall appear to such justices that such officer had refused or wilfully neglected to render and give such account, or to produce the vouchers relating thereto, or that any books, papers, or writings relating to the execution of this Act remained in the hands or in the custody or power of such officer, and he refused or wilfully neglected to deliver or give satisfaction respecting the same as aforesaid, then and in every such case such justices shall and they are hereby required to commit such offender to the common gaol or house of correction for the county, city, or place where such offender shall be or reside, there to remain, without bail or mainprize, until he shall have given a true and perfect account as aforesaid, or until he shall have paid such monies as aforesaid, or compounded with the said inspectors for such money, and shall have paid such composition in such manner as they shall appoint (which composition the said inspectors are hereby empowered to make and receive), and until he shall have delivered up such books, papers, and writings, or given satisfaction in respect thereof, to the said inspectors, or to such other person or persons as aforesaid; but no such offender shall be kept or detained in such common gaol or house of correction for want of sufficient distress by virtue of this act for any longer space of time than three calendar months.

XXVII. *Commitment of offender not to discharge his sureties.*

XXVIII. *Officers taking any fee or reward, besides the salary or fees appointed, to forfeit fifty pounds.*

XXIX. *Inspectors may sue and be sued in the name of any one of them.*

XXX. *Proceedings at meetings of inspectors to be entered in books, which shall be good evidence.*] And be it further enacted, that all acts, orders, and proceedings of the said inspectors at any of their meetings shall be entered in a book to be kept by them for that purpose, and shall be signed by two of the inspectors who were then present; and all such acts, orders, and proceedings shall then be deemed and taken to be original acts, orders, and proceedings; and such books shall and may be produced and read as evidence of all such acts, orders, and proceedings upon any appeal or trial or information, or any proceedings, civil or criminal, and in any court or courts of law or equity whatsoever.

XXXI. *Accounts to be kept.*] And be it further enacted, that the said inspectors shall and they are hereby required from time to time to order and direct a book or books to be provided and kept, in which book or books shall be entered true and regular accounts of all sums of money received, paid, and expended for or on account of the purposes of this Act, and of the several articles, matters, and things for which such sums of money shall have been disbursed and paid; and such book or books shall at all reasonable times be open to the inspection of the said inspectors and of every inhabitant rated to the relief of the poor of the parish adopting the provisions of this Act, without fee or reward; and the said inspectors and other persons aforesaid, or any of them, shall or may take copies of or extracts from the said book or books, or any part thereof, without paying for the same; and in case the said inspectors shall refuse to permit or shall not permit the said persons aforesaid to inspect the same, or take copies or extracts as aforesaid, such inspector [*sic*] shall forfeit and pay any sum of money not exceeding five pounds for each default, to be levied and applied in manner hereinafter provided.

XXXII. *Inspectors to issue an order to overseers for payment of money for the purposes of this Act.*] And be it further enacted, that as soon as the inspectors have been elected as aforesaid it shall be lawful for them, or any two or more of them, from time to time to issue an order under their hands to the overseers of the poor of any parish to which the provisions of this Act shall be extended, by which order they shall require the said overseers to levy the amount mentioned in the said order.

XXXIII. *Power to collect rates.*] And be it further enacted, that the overseers aforesaid shall, for the purpose of collecting, raising, and levying the rate, necessary for the purposes of this Act, proceed in the same manner, and have the same powers, remedies, and privileges, as for levying money for the relief of the poor in the said parish (a): provided always, that owners and occupiers of houses, buildings, and property (other than land) rateable to the relief of the poor in any such parish shall be rated at and pay a rate in the pound three times greater than that at which the owners and occu-

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(a) See 7 Will. 4. and 1 Vict. c. 45, s. 2, *post*; and *R. v. Marriott*, 12 A. & E. 779; *R. v. Whipp*, 4 Q. B. 141; *S. C.* 3 G. & D. 372; *Ormerod v. Chadwick*, 14 M. & W. 367.



piers of land shall be rated at and pay for the purposes of this Act: provided also, that the total amount of the sum to be collected, raised, and levied for the purposes of this Act within any one year shall not exceed such sum as shall have been agreed on by the inhabitants of the said parish as aforesaid, and that the said sum shall be assessed upon the full and fair annual value to which lands, houses, and buildings, and other property within the said parish shall be rated or shall be rateable according to the last valuation made and acted upon for the rate for the relief of the poor within the said parish.

XXXIV. *Land and houses to be rated separately.*

XXXV. *Power of succeeding overseers to collect rate.*

XXXVI. *Overseers to pay amount to treasurer. Receipt of treasurer to be a discharge to overseers.*

XXXVII. *Where other persons are authorized to collect poor's rates, such persons to be deemed overseers.*

XXXVIII. *Overseers may be distrained upon for non-payment.*

XXXIX. *Watchmen, &c., to be appointed, and provided with arms clothing, &c. (b).*

XL. *Watchmen, &c., to deliver up clothing on removal, &c. (c).*

XLI. *Duty of watchmen, &c. (d).*

XLII. *Watchmen, &c., to be sworn in, and to have the power of constables (d).*

XLIII. *Certain fees to be paid over to inspectors.]* And be it further enacted, that in all such cases in which any of the duties usually performed by constables shall have been executed by any of the officers appointed by the inspectors as hereinbefore enacted, all fees and allowances for the performance of such duties shall be paid over to the said inspectors, to be by them applied in aid of the rate levied under the provisions of this Act.

XLIV. *Fire engines to be provided.]* And be it further enacted, that it shall be lawful for the said inspectors from time to time to provide and keep up fire engines, with pipes and other utensils proper for the same, for the use of the parish adopting the provisions of this Act, and to provide a proper place of or places for the keeping of the same, and to place such engines under the care of some proper person or persons, and to make him or them such allowance for his or their trouble as may be thought reasonable, and the expenses attending the providing and keeping of such engines shall be paid out of the money authorized to be received by the inspectors under the provisions of this Act.

XLV. *Lamp-irons to be put up.]* And be it further enacted, that it shall be lawful for the said inspectors and they are hereby empowered from time

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(b) The provisions of this and the next three sections are rendered inoperative in boroughs by 5 & 6 Will. 4, c. 76, ss. 76—84, *ante*, pp. xxxii—xxxv.

(c) See note to last section.

(d) See note to sect. 39.

to time to cause such lamp-irons or lamp-posts or other posts to be put or fixed upon or against the walls or palisadoes of any houses, tenements, buildings, or inclosures (doing as little damage as may be practicable thereto), or to be put up and erected in such other manner, within all of any of the said roads, streets, and places within the limits of this Act, as they shall think proper; and also to cause such number of lamps, of such sizes and sorts, to be provided and affixed and put upon such lamp-irons and lamp-posts, as they shall think necessary for lighting all or any of such roads, streets, and places, and cause the same to be lighted with gas, oil, or otherwise for such number of hours in every twenty-four hours as they shall think necessary; and also to cause such a number of watch-houses or watch-boxes to be provided, erected or affixed as they shall think necessary for watching all or any of the streets, roads, and places within the limits of this Act.

XLVI. *Gas pipes not to be laid on private premises without consent.*

XLVII. *Owners of private grounds may alter position of pipes.*

XLVIII. *For stopping the escape of gas. Penalty for neglect.*

XLIX. *Power to convey away washings of gas-works.*

L. *Penalty for conveying washings into any river, &c.*

LI. *Gas pipes to be laid four feet from water pipes, and in a particular manner.*

LII. *To prevent escape of gas and contamination of water.*

LIII. *For ascertaining if the water be contaminated.*

LIV. *Persons supplying gas liable to be indicted for a nuisance.*

LV. *Penalty for wilfully destroying or injuring lamps.*

LVI. *How persons accidentally breaking lamps are to be dealt with.*

LVII. *Power for inspectors to contract for the works directed to be done by this Act.]* And be it further enacted, that it shall and may be lawful to and for the said inspectors from time to time to enter into any contract or contracts with any person, company or companies whatsoever, for lighting the same streets, roads, and other places, or any of them, or any part thereof, either with oil or with gas, or with any other material or in any other manner whatsoever, or for furnishing lamps, lamp-irons, lamp-posts, watch-boxes, posts, chains, pales, rails, and other things necessary for the purposes aforesaid, or any materials for the same, which contract or contracts shall specify the several works to be done and the prices to be paid for the same, and the time or times when the works shall be completed, and the penalties to be suffered in cases of non-performance thereof, and shall be signed by two or more of the said inspectors, and also by the person or persons contracting to perform such works respectively, which contract or contracts, or a copy or copies thereof, shall be entered in a book to be kept for that purpose; but no contract above the value or sum of twenty pounds shall be entered into unless previous to the making of any such contract fourteen days' notice shall be given in one or more of the public newspapers published in the county in which the said parish shall be situate, expressing the intention of entering into such contract, in order that any person or persons willing to undertake the same may make proposals for that purpose,

to be offered and presented to the said inspectors at a certain time and place in such notice to be mentioned: provided always, that if the said inspectors shall be of opinion that it will not be advantageous to contract with the person or persons offering the lowest price, it shall be lawful for the said inspectors to contract with such other person or persons as they shall think proper.

*LVIII. Inspectors may sue for breach of contract; or may compound with contractor.*] And be it further enacted, that in case the same shall not be well and sufficiently performed, according to the terms, intent, and meaning of such contract or contracts, or shall not be finished or completed at or within the time or times specified in such contract or contracts then the said inspectors may cause an action to be brought in any of His Majesty's courts of law at Westminster against any such contractor for any penalty contained in his contract; and on proof of his signing the said contract or contracts, or (a) non-performance thereof at the time or times for that purpose to be therein mentioned, the said inspectors shall be entitled to and recover the full penalty contained in any such contract, which, when recovered, shall be applied for the purposes of this Act: provided always, that it shall be lawful for the said inspectors (if they think fit) to compound and agree with any contractor for any penalty incurred by him for the breach or non-performance of any such contract, for such sum of money as the said inspectors shall think proper, not being less than the injury or damage sustained by the breach or non-performance of such contract, and all costs, charges, and expenses which shall be occasioned thereby; and it shall be lawful for the said inspectors to cancel or make void any contract with any person or persons whomsoever, by mutual consent, if they shall think proper.

*LIX. Inspectors may purchase or rent ground or buildings for the purposes of this Act.*] And be it further enacted, that the said inspectors may and they are hereby authorized and empowered to treat with the owner or owners and occupier or occupiers of any houses, buildings, lands, and grounds for the purposes of this Act, for such sum or sums of money, or yearly rent, or for such time, as to them shall appear reasonable (which sum or sums of money and yearly rent shall be respectively paid out of the monies to arise by virtue of this Act), in such place or places as they may think proper.

*LX. Property of lamps, &c., vested in the inspectors.*] And be it further enacted, that the property of and in all lamps, lamp-irons, lamp-posts, watch-houses, watch-boxes, posts, chains, pales, and rails in, about or belonging to the said streets and places within any parish or part of a parish adopting the provisions of this Act, or any of them, and of and in all the iron, timber, stone, bricks, and other materials and furniture and things of, in, and belonging thereto (except when the same shall be otherwise regulated by contract with the said inspectors), shall be and the same are hereby vested in the said inspectors, and may be sold and disposed of from time to time as they shall think proper; and the money arising from such sale or sales shall be applied towards the purposes of this Act; and the said inspectors are hereby authorized and empowered to bring or cause to be brought any action or actions in such name or names and in manner as herein is provided, or to prefer or order and direct the preferring of any bill or bills of

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(a) *Quære*, "and."

indictment, against any person or persons who shall steal, take, or carry away (as the case may be) all or any part of such lamp-irons, lamp-posts, watch-houses, watch-boxes, iron, timber, and stone, bricks, furniture, posts, chains, pales, rails, or other materials and things as aforesaid; and in all such actions or bills of indictment it shall be and be deemed and taken to be sufficient to state generally that the article or articles, thing or things, for or on account of which such action or actions shall be brought, or such bill or bills of indictment preferred, is or are the property of the inspectors, without particularly stating or specifying the name or names of all or any of the said inspectors.

LXI. *Inspectors of adjoining parishes may unite.*

LXII. *Forms of Information and Conviction.*] And for the more easy prosecution and conviction of offenders against this Act, be it further enacted, that all and every justices and justice of the peace before whom any person or persons shall be convicted or prosecuted for any offence against this Act shall and may cause the information and conviction respectively to be drawn in the form following, or in other words to the same effect that is to say):—

*Form of Information.*

County of } Be it remembered, that on the — day of — A. B. of —  
to wit } informeth — of His Majesty's justice [*or justices*] of the  
peace for the said — of — that — of — in the —  
of — [*here describe the offence, with the time and place, and follow the Act as near as may be*], contrary to the provisions of an Act made in the — year of the reign of King William the Fourth, intituled [*insert the title of this Act*], which hath imposed a forfeiture of — for the said offence. Taken the — day of — before .

*Form of Conviction.*

County of } Be it remembered, that on the — day of — in the —  
to wit } year of the reign of — and in the year of our Lord —  
A. B. is convicted before — of His Majesty's justice [*or justices*] of the peace for the said — for [*here specify the offence, and when and where committed*], contrary to the form of the statute made in the — year of the reign of King William the Fourth, intituled [*here set forth the title of this Act*]; and — do hereby declare and adjudge that the said — hath forfeited for the said offence the sum of — [*or shall be committed to — for the space of — as the case may be*]. Given under — hand and seal, the day and year first above written.

LXIII. *Recovery and application of penalties.*] And be it further enacted, that all fines, penalties, and forfeitures inflicted or imposed by this Act, or by virtue of any rule or order made in pursuance hereof (the mode of recovery whereof is not herein otherwise provided for), may, in case of non-payment thereof, be recovered in a summary way, by order and adjudication of any two justices of the peace, on complaint to them for that purpose exhibited, and afterwards be levied, as well as the costs (if any) of such proceedings, on non-payment, by distress and sale of the goods and chattels of the offender or respective offenders, or person or persons liable

to pay the same, by warrant under the hands and seals of such justices, who are hereby authorized and required to summon and examine any witness upon oath or affirmation of and concerning such offences, matters, and things, and to hear and determine the same; and the overplus (if any) of the money raised or recovered, after discharging the fine, penalty, or forfeiture for which such warrant shall be issued, and the costs and expenses of recovering and levying the same (if any such there be), shall be rendered to the owner or owners of the goods and chattels so seized and distrained; all which penalties, not herein directed to be otherwise applied, shall be paid to the said inspectors or their treasurer, to be applied for such purposes of this Act as the said inspectors shall order and direct, except in all such cases where the penalty or forfeiture shall be incurred by the said inspectors, and then the same shall be paid to the informer; and it shall be lawful for the said justices to order the offender or offenders so convicted to be detained in safe custody until return can be conveniently made to such warrant or warrants of distress, unless the said offender or offenders shall give sufficient security, to the satisfaction of such justices, for his, her, or their appearance before the said justices on such day or days as shall be appointed for the return of such warrant or warrants of distress, such day or days not being more than seven days from the time of taking such security, and which security the said justices are hereby empowered to take by way of recognizance or otherwise; but if upon the return of such warrant or warrants it shall appear that no sufficient distress can be had whereupon to levy the said penalty or penalties, and such costs as aforesaid, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of any such justices, upon the confession of the offender or offenders, or otherwise, that he, she, or they have or hath not sufficient goods and chattels whereupon such penalties, forfeitures, costs, and expenses can be levied if a warrant of distress were issued, such justices shall not be required to issue such warrant of distress, and thereupon it shall be lawful for such justices, and they are hereby required and empowered, by warrant or warrants under their hands and seals, to commit such offender or offenders to the common gaol or house of correction in the said county or place in which the said parish shall be situate, there to be kept, with or without hard labour, without bail or mainprize, for any time not exceeding six calendar months, or until such offender or offenders shall have paid such penalty or penalties, and all costs and charges attending such proceedings as aforesaid, to be ascertained by such justices, or shall otherwise be discharged by due course of law.

LXIV. *Inspectors exempt from personal liability.*] Provided always, and be it further enacted, that nothing herein contained shall be deemed, construed, or taken to extend to render the said inspectors personally, or any of their goods and chattels (other than such as may be invested in them in pursuance of this Act), liable to the payment of any sum or sums of money as or by way of compensation or satisfaction in the cases in which such compensation or satisfaction is herein directed to be made by the said inspectors.

LXV. *Inhabitants may be witnesses.*

LXVI. *Appeal to the general or quarter sessions against order of inspectors, &c.*] Provided also, and be it further enacted, that if any person or persons shall find himself, herself, or themselves aggrieved by any order, direction, or appointment of the said inspectors, or any order or conviction

of one or more justice or justices of the peace, it shall be lawful for such person or persons to appeal to any general or quarter sessions of the peace to be held in and for the county, city, riding, borough, town, shire, division, liberty, or place in which the parish shall be situate, within four calendar months next after the cause of complaint shall have arisen, or if such sessions shall be held before the expiration of one calendar month, then such appeal shall be made to the secondly succeeding sessions, either of which court of sessions is hereby empowered to hear and finally determine the matter of the said appeal, and to make such order therein as to them shall seem meet, which order shall be final and conclusive to and upon all parties; provided that the person or persons so appealing shall give or cause to be given at least fourteen days' notice in writing of his, her, or their intention of appealing as aforesaid, and of the matter or cause thereof, to the said inspectors, or other the respondent or respondents, and within five days after such notice shall enter into a recognizance before some justice of the peace, with sufficient securities, conditioned to try such appeal at the then next general sessions or quarter sessions of the peace, which shall first happen, and to abide the order of and pay such costs as shall be awarded by the justices at such quarter sessions or any adjournment thereof: and such justices, upon hearing and finally determining such matter of appeal, shall and may, according to their discretion, award such costs to the party appealing or appealed against as they shall think proper; and their determination in or concerning the premises shall be conclusive and binding on all parties to all intents and purposes whatsoever.

*LXVII. Appeals against rate to be subject to same rules as appeals against poor rates.*

*LXVIII. Plaintiff not to recover in any action after tender of sufficient amends.*

*LXIX. Limitation of actions.*

*LXX. Proceedings not to be unlawful for want of form.*

*LXXI. Parishes may adopt only parts of Act.*

*LXXII. Limiting the powers of the Act.]* And be it further enacted that nothing in this Act contained shall be construed to extend to abridge repeal, alter, amend, or interfere with the powers and provisions contained in an Act made and passed in the tenth year of the reign of His late Majesty George the Fourth, intituled *An Act for improving the police in and near the metropolis* (a), or to extend to any parish or place already regulated by or under the provisions of any Act of parliament for all the purposes hereinbefore provided for, or to interfere with the powers which any corporate body may have with respect to watching and lighting.

*LXXIII. Parts of parishes may adopt the provisions of this Act; but not to interfere with any local Act.*

*LXXIV. Surveyor of commissioners of sewers may enter into gas works, to see if there be any escape of gas, &c.*

*LXXV. Not to affect the rights of the commissioners of sewers.*

LXXXVI. *Nor to affect the universities.*

LXXXVII. *Construction of Act.*] And be it further enacted, that the powers given to watch and light any parish shall be understood to be given to any wapentake, division, city, borough, liberty, township, market town, franchise, hamlet, tithing, precinct, and chapelry, or parts within the same; and that where the word "parish" is used it shall be understood to extend to any parts within the same; and that the powers given to a churchwarden shall be understood to be given to any chapelwarden, overseer, or other person usually calling any meeting on parochial business; and that the words "justice of the peace" shall be understood to mean justices of the peace for the county, city, borough, town, division, riding, shire, liberty, or place in which the parish which may adopt the provision of this Act shall be situate; and the word "ratepayer" to include all persons assessed to and paying rates for the relief of the poor.

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#### 1 VICT. CAP. XLV.

An Act to alter the mode of giving Notices for the holding of Vestries, of making Proclamations in cases of Outlawry, and of giving Notices on Sundays with respect to various matters. [12th July, 1837.]

*So much of the first-recited Act (b) as directs publication of notices repealed.*—*Notices not to be given in churches during divine service, &c.*] Whereas by an Act of parliament passed in the fifty-eighth year of the reign of His Majesty King George the Third, intituled *An Act for the regulation of parish vestries* (b), it is enacted, that no vestry or meeting of the inhabitants in vestry of or for any parish shall be holden until public notice shall have been given of such vestry, and of the place and hour of holding the same, and the special purpose thereof, three days at the least before the day to be appointed for holding such vestry, by the publication of such notice in the parish church or chapel on some Sunday during or immediately after divine service, and by affixing the same, fairly written or printed, on the principal door of such church or chapel: and whereas by an Act passed in the thirty-first year of Queen Elizabeth (c) it is enacted, that before any outlawry shall be had and pronounced proclamation shall be made at the door of the church or chapel of the town or parish where the defendant shall be dwelling immediately after divine service on a Sunday: and whereas by divers Acts relative to the assessing and collecting of highway and poor rates and land tax, and other matters, it is directed or required that public notice shall be given with reference to certain proceedings relating thereto respectively in the parish churches or chapels during divine service: and whereas by ancient custom notice is usually given in churches during divine service of the times appointed for holding courts leet, courts baron, and customary courts: and whereas it is expedient that such mode of giving notices should be altered: be it therefore enacted, &c., that from and after the passing of this Act, so much of the said first-recited Act as directs the publication of such notices to be made in the parish church or chapel on some Sunday during or immediately after divine service

shall be and the same is hereby repealed; and that from and after the first day of January next no proclamation or other public notice for a vestry meeting or any other matter shall be made or given in any church or chapel during or after divine service, or at the door of any church or chapel at the conclusion of divine service.

II. *Notices heretofore usually given during or after divine service, &c., to be affixed to the church doors.*

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3 & 4 VICT. CAP. XLVII.

An Act to repeal so much of an Act of the ninth year of the reign of Her late Majesty Queen Anne as prevents the re-election of Mayors of Parliamentary Boroughs and other annual Returning Officers.

[4th August, 1840.]

9 *Anne, c. 20, s. 8 (a), repealed.*] Whereas by an Act passed in the ninth year of the reign of Her late Majesty Queen Anne, intituled *An Act for rendering the proceedings upon writs of mandamus and informations in the nature of a quo warranto more speedy and effectual, and for the more easy trying and determining the rights of offices and franchises in corporations and boroughs*, after reciting that “in divers counties, boroughs, towns corporate, and Cinque Ports, where the mayor, bailiff, or other officer or officers to whom it belonged to preside at the election and make return of any member to serve in parliament ought to be annually elected, the same person had been re-elected into such office for several years successively, which had been found inconvenient,” it was enacted, “that no person or persons who had been or should be in such annual office for one whole year should be capable to be chosen into the same office for the year immediately ensuing: and that where any such annual officer or officers should be to continue for a year, and until some other person or persons should be chosen and sworn into such office, if any such officer or officers should voluntarily and unlawfully obstruct and prevent the choosing another person or persons to succeed into such office at the time appointed for making another choice, he or they shall forfeit one hundred pounds for every such offence, to be recovered, with costs of suit, by such person as would sue for the same in any of Her Majesty’s courts of record before mentioned, by action of debt, bill, plaint, or information, wherein no essoign, protection, or wager of law should be allowed, nor any more than one imparlance; one moiety thereof to Her Majesty, her heirs and successors, and the other moiety to him or them that would sue for the same:” and whereas such provision has now become unnecessary and inexpedient; be it therefore enacted, &c., that so much of the said Act of the ninth year of the reign of Her late Majesty Queen Anne as is hereinbefore recited shall be and the same is hereby repealed.

II. *Election of the returning officers re-elected not to be questioned under the above provision.*] And be it enacted, that no person who shall before



the passing of this Act have been re-elected into any office by virtue of which it belongs to him to preside at any election, or make return of any member to serve in parliament, shall be deemed to have been incapable of being chosen into such office, or to be liable to have his right to exercise such office questioned, by reason of so much of the said recited Act as is hereby repealed.

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6 & 7 VICT. CAP. LXVII.

An Act to enable parties to sue out and prosecute writs of error in certain cases upon the proceedings on writs of *Mandamus*.

[22nd August, 1843.]

Whereas writs of *mandamus* are issued by Her Majesty's Court of Queen's Bench and the courts of the counties palatine, and the application for the same must now be made in those courts respectively alone: and whereas writs of *mandamus* are frequently awarded, and often in cases of considerable importance, and the practice of issuing such writs hath of late very much increased: and whereas it is expedient that parties interested in the issuing of or in the proceedings upon such writs respectively shall be enabled in certain cases to have the judgments and decisions of the said Court of Queen's Bench and courts of the counties palatine respectively, in respect of the said writs and of the proceedings thereon, reviewed by a court of error, if they shall so think fit, and that a certain mode of effecting the same shall be ordained and established: and whereas by a certain Act made and passed in the ninth year of the reign of Queen Anne, intituled *An Act for rendering the proceedings upon writs of mandamus and informations in the nature of a quo warranto more speedy and effectual, and for the more easy trying and determining the rights of offices and franchises in corporations and boroughs* (b), it was enacted, amongst other things, that in certain cases therein mentioned, when a writ of *mandamus* should issue and a return should be made thereunto, it should be lawful for the person suing or prosecuting such writ to plead to or traverse all or any of the material facts contained within the said return to which the person making such return should reply, take issue, or demur, and such further proceeding in such manner should be had therein for the determination thereof as might have been had if the person suing such writ had brought his action on the case for a false return: and whereas by an Act passed in the first year of the reign of the late King William the Fourth (c), the said provision hereinbefore mentioned of the said herein first-recited Act was extended to writs of *mandamus* in all other cases, and to the proceedings thereon: and whereas in neither of the said recited Acts, or in any other Act, is any power or authority given to the person prosecuting such writ of *mandamus* to demur to the return made to any such writ, so that the decision of the said courts respectively as to the validity of such return could be reviewed by a court of error; for remedy whereof, therefore, be it enacted, &c.

*In order to object to a return to a mandamus the prosecutor must demur.—Proceedings thereupon.*

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(b) 9 Anne, c. 20, *ante*, p. cclxv.

(c) 1 Will. 4, c. 21, *ante*, p. cclxxii.

II. *Writ of error upon the judgment.*

III. *Peremptory writ of mandamus.*

IV. *Court of error may make rules.*

### 13 & 14 VICT. CAP. CV.

An Act for facilitating the Union of Liberties with the Counties in which they are situate. [14th August, 1750.]

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X. *Boroughs within liberties.*] Provided, that where any borough corporate or other corporate place, or any part thereof, is situate within any liberty united with any county under this Act, such borough or place, or part thereof, as aforesaid, from the time of such union (save as otherwise directed by the order of union) shall be deemed to be within and part of such county for all purposes for which before such union it was within and part of such liberty; and such borough or place, or part thereof, and such county respectively, in relation to each other and the inhabitants and others in respect thereof, shall have and be subject to the like rights, privileges, liabilities, and jurisdiction which such borough or place, or part thereof, and such liberty respectively, had and where subject to before such union, and, save as aforesaid, no borough or other corporate place, named in either of the schedules to 5 & 6 Will. 4, c. 76 (a), or to which the provisions of that Act have been extended by charter or Act of parliament, shall be subject to the provisions of this Act.

### 15 & 16 VICT. CAP. LXXXI.

An Act to consolidate and amend the Statutes relating to the Assessment and Collection of County Rates in England and Wales.

[30th June, 1852.]

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XXXII. *The overseers of parishes situated partly within boroughs and partly without to collect the county rates leviable on the part of the parish not comprised within the borough.*] That where any parish or place separately maintaining its own poor shall be divided, so that a part is comprised in a borough not subject to contribute to the county rate, while the part out of the borough is liable to contribute thereto, and any county rate shall be assessable upon the part of the parish or place which is comprised within the county and excluded from the borough, the overseers of such parish or place shall, on receipt of any precept or other lawful demand from the justices of the county or other due authority in that behalf, demanding

the payment of any sum of money as the contribution of the part of such parish or place out of the borough towards any such rate as aforesaid, with all convenient speed assess the sum so required upon the persons liable within such part of the parish or place to pay the poor rate therein, by means of a separate rate, to be made, allowed, and published in like manner as the poor rate, and either by themselves or by the collector of poor rates for the time being appointed for the said parish or place shall collect the same separately or with the poor rate payable by the parties assessed thereto, and for the purposes of assessing and collecting the same shall have all such powers, authorities, privileges, protections, and incidents as belong to them in the assessing and collection of the poor rate, and all provisions of the law for enforcing the collection of the poor rate, and recovering the costs of the proceedings therein, shall be applicable to the collection of the rate or rates herein last above mentioned and provided for.

XXXIII. *Appeal against the rate, and audit of the accounts.*] That any person assessed to any rate made under the authority of the provisions last hereinbefore contained may appeal against the same, in like manner, and with the like consequences in all respects, and subject to the same provisions and regulations as in appeals against the poor rate; and that every overseer and collector shall account for the money levied, collected, and expended under the authority of this Act to the auditor of the district comprising such parish or place, in like manner as for the poor rate, and if any balance be found to be in his hands shall apply the same towards the next county rate required for the like purpose of this Act, or shall pay the same to his successor in office; and in default of his so applying the same while in office, or making payment to his successor within seven days after the balance shall have been found, such auditor shall proceed to recover the same from the person holding the same, in like manner as sums certified by him to be due from persons accounting shall from time to time be recoverable, and he shall be paid his costs and expenses, when not recovered from the defendant, by the then overseers of the parish or place, who shall be reimbursed out of the balance of such rate, or, if need be, out of the next rate.

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XXXVIII. *Mode of enforcing repayment by borough treasurers of money expended by counties out of the county rates as provided by 5 & 6 Will. 4, c. 76, ss. 114 and 117 (b).*] Whereas by an Act passed in the fifth and sixth years of the reign of His late Majesty King William the Fourth, intituled *An Act to provide for the regulation of municipal corporations in England and Wales*, it is thereby enacted that the treasurer of every county in England and Wales should keep an account of all costs arising out of the prosecution, maintenance, and punishment, conveyance and transport of all offenders committed for trial to the assizes in such county from any borough in which a separate court of quarter sessions of the peace should be holden, and likewise of all sums received in aid or on account of the county rate, and expended out of the county rate for other purposes than the costs before mentioned, and should, not more than twice in every year, send a copy of the said accounts to the council of every such borough, and should make orders on the council of every such borough for the payment of the sums chargeable upon the same, and the council of such borough should forthwith

order the same, with all reasonable charges of making and sending the said account, to be paid to the treasurer of such county out of the borough fund : and whereas it is expedient to provide, as near as may be, one uniform remedy to recover county rates, and the orders of the county treasurer upon the councils of boroughs from the guardians or overseers and councils of boroughs respectively, when the same are not paid within a time limited : be it therefore enacted, that it shall and may be lawful for any two justices of the peace for the county, upon the complaint or information of the treasurer of the same county to be made or taken one calendar month after the issue of any order or orders upon the council of any borough by the same county treasurer, to cause to be issued and sent to the treasurer of any such borough a warrant ordering such borough treasurer to pay to the treasurer of the same county, over and besides the sum or sums mentioned in the first-named order or orders, the additional sums named in such warrant, the same being calculated in the proportion of one shilling to every ten on the respective sums named in the said original order or orders : and until payment thereof the county treasurer shall have in respect of such warrants, all the powers for the recovery thereof, as are given against any guardian or overseer for the recovery of county rates and surcharges under and by virtue of this Act : provided always, that nothing in this Act contained shall extend to render any such borough, or any property situated therein, liable to be assessed or to contribute to county rate, save as in the said recited Act is mentioned and contained, and as hereinbefore expressly provided.

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LI. *The Act extended to all places having separate commission of the peace and to all rates of the nature of county rates.*] In the construction of this Act the word "county" shall mean and include any riding or division having a separate commission of the peace, or separate county treasurer, and any liberty, franchise, or other place in which rates in the nature of county rates may be levied having a separate commission of the peace, and not subject to the jurisdiction of the county or counties at large in which such liberty, franchise, or place may lie, nor contributing or paying to the county rates made for such county or counties at large ; and that the words "county rate" shall mean and include every rate or tax assessed in any county or any division of a county as aforesaid for all or any of the purposes to which county rate or stock is or may hereafter be made liable.

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### 17 & 18 VICT. CAP. LXXI.

An Act to amend the law concerning the making of Borough Rates in Boroughs not within the Municipal Corporation Acts.

[31st July, 1854.]

Whereas by an Act of the fifteenth and sixteenth years of the reign of Her Majesty Queen Victoria, intituled *An Act to consolidate and amend the statutes relating to the assessment and collection of county rates in England and Wales* (a), it was, among other things, provided

vided, that from and after the passing of the said Act it should be lawful for the justices of the peace in any county in England and Wales, in general or quarter sessions assembled, to appoint any number of justices, not exceeding eleven in number nor less than five, to be a committee for the purpose of preparing a basis or standard for the assessing of county rates, and that it should be lawful for the justices of the peace assembled at their general or quarter sessions to order and direct a fair and equal county rate to be made according to the basis or standard for the time being in force; and whereas there are divers boroughs not being within the provisions of the Municipal Corporation Acts in which borough rates in the nature of county rates have heretofore been made under the various Acts repealed by the said Act of the fifteenth and sixteenth of Her Majesty (b), and which boroughs have not as many as five justices of the peace: and whereas doubts have arisen whether since the passing of the said Act of the fifteenth and sixteenth of Her Majesty a rate in the nature of a county rate can be made in such boroughs by reason of the want of a sufficient number of justices: and whereas it is expedient to remove such doubts, as also to amend the law in respect to the making of such rates in the said boroughs: be it therefore enacted, &c.

*I. Justices in boroughs not within provisions of Municipal Corporations Act may make borough rates.—As to appeals.*] From and after the passing of this Act it shall and may be lawful for the justices of the peace in any borough not being within the provisions of the Municipal Corporation Act, and not being liable to contribute to any county rate, from time to time to make and levy within their borough a borough rate in the nature of a county rate for defraying any expenses incurred before the passing of this Act, and which may hereafter be incurred for all or any of the purposes defined in the Municipal Corporations Act, 1835 (c), as purposes for which a borough rate may be levied; and for that purpose the justices of such borough and all persons acting under their authority shall, within their borough, have all the powers and protection which were given to justices of the peace by virtue of the Act made in the fifty-fifth year of the reign of His late Majesty King George the Third (d) in the said Municipal Corporations Act mentioned, and all powers given to town councils by any Acts since passed concerning the making and levying of borough rates in boroughs being within the Municipal Corporations Act, 1835 (c), or as near thereto as the nature of the case will admit: provided always, that such borough justices shall not be empowered to hear or determine any appeal against any such rate; and if any person shall think himself aggrieved by any such rate, it shall be lawful for him to appeal to the recorder of the borough in which such rate has been made, or in case there shall be no recorder within such borough then to the justices at the next court of quarter sessions for the county within which such borough is situate, or whereunto it is adjacent, and such recorder or justices respectively shall have power to hear and determine such appeal, and to award relief in the premises as in the case of an appeal against any county rate; and all sums of money levied in pursuance of such borough rate shall be paid over to the treasurer of the borough for the time being, and be applied by him for the purposes for which the same are applicable as hereinbefore mentioned.

(b) *Viz.*, 12 Geo. 2, c. 29; 13 Geo. 2, c. 18; 37 Geo. 3, c. 65; 55 Geo. 3, c. 51; 56 Geo. 3, c. 49; 57 Geo. 3, c. 94; 1 & 2 Geo. 4, c. 85.

(c) 5 & 6 Will. 4, c. 76, *ante*, p. iv.

(d) Cap. 51. See 5 & 6 Will. 4, c. 76, s. 92.

## 17 &amp; 18 VICT. CAP. 125.

An Act for the further amendment of the process, practice, and mode of pleading in and enlarging the jurisdiction of the Superior Courts of Common Law at Westminster, and of the Superior Courts of Common Law of the Counties Palatine of Lancaster and Durham.

[12th August, 1854.]

\* \* \* \* \*

LXXVI. *Proceedings for prerogative writ of mandamus accelerated.*] Upon application by motion for any writ of *mandamus* in the Court of Queen's Bench, the rule may in all cases be absolute in the first instance, if the court shall think fit; and the writ may bear *teste* on the day of its issuing, and may be made returnable forthwith, whether in term or in vacation, but time may be allowed to return it, by the court or a judge, either with or without terms.

LXXVII. *Proceedings on prerogative writ of mandamus.*] The provisions of "The Common Law Procedure Act, 1852 (a)," and of this Act, so far as they are applicable, shall apply to the pleadings and proceedings upon a prerogative writ of *mandamus* issued by the Court of Queen's Bench.

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30 & 31 VICT., CAP. 62.

An Act to abolish a certain declaration, commonly called the declaration against Transubstantiation, the Invocation of the Saints, and the Sacrifice of the Mass, as practised in the Church of *Rome*; and to render it unnecessary to take, make, or subscribe the same as a qualification for the exercise or enjoyment of any civil office, franchise, or right.

[25th July, 1867.]

Whereas by various Acts a certain declaration, commonly called the declaration against transubstantiation and the invocation of saints, and the sacrifice of the mass, as practised in the Church of *Rome*, and which declaration is more fully set forth in the schedule to this Act annexed, is required to be taken, made, and subscribed by the subjects of Her Majesty for the enjoyment of certain civil offices, franchises, and rights:

And whereas it is expedient to alter the law in that respect, and to abolish the said declaration:

Be it enacted, &c.

1. *Repeal of all provisions in recited Acts requiring said declaration to be taken as qualification for office.*] From and after the passing of this Act all such parts of the said Acts as require the said declaration to be taken, made, or subscribed by any of Her Majesty's subjects as a qualification for the exercise or enjoyment of any civil office, franchise, or right shall be and the same are hereby repealed, and it shall not be obligatory for

any person hereafter to take, make, or subscribe the said declaration as a qualification for the exercise or enjoyment of any civil office, franchise, or right within the realm.

2. *Nothing in this Act to enable Roman Catholics to hold offices other than those they are now entitled to hold.*] Nothing in this Act contained shall be construed to enable any person professing the Roman Catholic religion to exercise or enjoy any civil office, franchise, or right for the exercise or enjoyment of which the taking, making, or subscribing the declaration by this Act abolished is now by law a necessary qualification, or any other civil office, franchise, or right from which he is now by law excluded.

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## SCHEDULE.

*Declaration used in England against transubstantiation, the invocation of saints, and the sacrifice of the mass, prescribed by 30 Car. II., c. 1.*

\* \* \* \* \*

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## 31 & 32 VICT. CAP. CXXV.

An Act for amending the Laws relating to Election Petitions, and providing more effectually for the Prevention of Corrupt Practices at Parliamentary Elections. [31st July, 1868.]

3. *Interpretation of terms.*] The following terms shall in this Act have the meanings hereinafter assigned to them, unless there is something in the context repugnant to such construction (that is to say);—

\* \* \* \* \*

“Borough” shall mean any borough, university, city, place, or combination of places, not being a county as hereinbefore defined, returning a member or members to serve in parliament.

\* \* \* \* \*

“Corrupt practices,” or “corrupt practice,” shall mean bribery, treating and undue influence, or any of such offences, as defined by Act of parliament, or recognized by the common law of parliament.

\* \* \* \* \*

43. *Punishment of candidate guilty of bribery.*] Where it is found by the report of the judge upon an election petition under this Act, that bribery has been committed by or with the knowledge and consent of any candidate at an election, such candidate shall be deemed to have been personally guilty of bribery at such election, and his election, if he has been elected, shall be void, and he shall be incapable of being elected to and of sitting in the House of Commons during the seven years next after the date of his being found guilty; and he shall further be incapable during the said period of seven years:—

- (1). Of being registered as a voter and voting at any election in the United Kingdom; and

- (2). Of holding any office under the Act of the session of the fifth and sixth years of the reign of His Majesty King William the Fourth, chapter seventy-six, or of the sessions of the third and fourth years of the reign of Her present Majesty, chapter one hundred and eight, or any municipal office; and
- (3). Of holding any judicial office, and of being appointed and of acting as a justice of the peace.

44. *Penalty for employing corrupt agent.*] If on the trial of any election petition under this Act any candidate is proved to have personally engaged at the election to which such petition relates as a canvasser or agent for the management of the election, any person knowing that such person has within seven years previous to such engagement been found guilty of any corrupt practice by any competent legal tribunal, or been reported guilty of any corrupt practice by a committee of the House of Commons, or by the report of the judge upon an election petition under this Act, or by the report of commissioners appointed in pursuance of the Act of the session of the fifteenth and sixteenth years of the reign of Her present Majesty, chapter fifty-seven, the election of such candidate shall be void.

45. *Disqualification of persons found guilty of bribery.*] Any person other than a candidate, found guilty of bribery in any proceeding in which after notice of the charge he has had an opportunity of being heard, shall, during the seven years next after the time at which he is so found guilty, be incapable of being elected to and sitting in parliament; and also be incapable—

- (1). Of being registered as a voter and voting at any election in the United Kingdom; and
  - (2). Of holding any office under the Act of the session of the fifth and sixth years of the reign of His Majesty King William the Fourth, chapter seventy-six, or of the sessions of the third and fourth years of the reign of Her present Majesty, chapter one hundred and eight, or any municipal office; and
  - (3). Of holding any judicial office, and of being appointed and of acting as a justice of the peace.
-



## 38 &amp; 39 VICT., CAP. 40.

An Act to amend the Law regulating Municipal Elections.

[19th July, 1875.]

Be it enacted, &c.

1. *Provisions applicable to municipal elections.*] The following provisions shall be enacted and apply to nominations at all municipal elections of councillors, auditors, and assessors after the passing of this Act :

1. Nine days at least before any such election the town clerk shall prepare, sign, and publish a notice in the form No. 1, set forth in the first schedule to this Act, or to the like effect, by causing the same to be placed on the door of the town hall, and in some conspicuous parts of the borough or ward for which any such election is to be held.
2. At any such election every candidate shall be nominated in writing; the writing shall be subscribed by two enrolled burgesses of such borough or ward as proposer and seconder, and by eight other enrolled burgesses of such borough or ward as assenting to the nomination. Each candidate shall be nominated by a separate nomination paper, but the same burgesses, or any of them, may subscribe as many nomination papers as there are vacancies to be filled, but no more. Every person nominated shall be enrolled on the burgess roll of the borough, or a person whose name is inserted in the separate list at the end of the burgess roll, as provided by section three of the Act thirty-two and thirty-three Victoria, chapter fifty-five, and shall be otherwise qualified to be elected. The nomination paper shall state the surname and other names of the persons nominated, with his place of abode and description, and shall be in the form No. 2, set forth in the first schedule to this Act, or to the like effect. And the town clerk shall provide nomination papers, and shall supply any enrolled burgess with as many nomination papers as may be required, and shall, at the request of any such person, fill up a nomination paper in manner prescribed by this Act.
3. Every nomination paper subscribed as aforesaid shall be delivered by the candidate himself, or his proposer or seconder, to the town clerk, seven days at least before the day of election, and before five o'clock in the afternoon of the last day on which any such nomination paper may by law be delivered; the town clerk shall forthwith send notice of such nomination to each person nominated. The mayor shall attend at the town hall on the day next after the last day for the delivery of nominations to the town clerk between the hours of two and four in the afternoon, and shall decide on the validity of every objection made to a nomination paper, such objection to be made in writing. The candidate nominated by each nomination paper, and one other person, appointed by or on behalf of the candidate as hereinafter mentioned, and no person other than aforesaid, shall, except for the purpose of assisting the mayor, be entitled to attend such proceedings, and each candidate and the person appointed by him shall, during the time appointed for the attendance of the mayor for the purposes of this section, have

respectively power to object to the nomination paper of every person nominated at the same election. The decision of the mayor, which shall be given in writing, shall, if disallowing any objection to a nomination paper, be final, but if allowing the same shall be subject to reversal on petition questioning the election or return. The appointment by or on behalf of candidates of persons as aforesaid shall be made in writing under the hand of the candidate, or, in case he is absent from the United Kingdom, then under the hand of his proposer or seconder, and shall be delivered to the town clerk before five o'clock in the afternoon of the last day on which nomination papers may by law be delivered.

The town clerk shall at least four days before the day of election cause the surnames and other names of all persons duly nominated, with their respective places of abode and descriptions, and the names of the persons subscribing their respective nomination papers as proposers and seconders, to be printed and placed on the door of the town hall, and in some conspicuous parts of the borough or ward for which such election is to be held.

4. Section eight of the Act of twenty-second Victoria, chapter thirty-five, so far as the same is now in force, shall apply to nominations of councillors, auditors, and assessors, duly made and allowed under this Act.

Section three of the Ballot Act, 1872, shall apply to nomination papers under this Act, and so applied, the word "returning officer" shall be taken to include town clerk in reference to the delivery of such nomination papers.

2. *Candidates out of United Kingdom ineligible.*] The nomination of a person who is absent from the United Kingdom shall be void, unless his written consent given within one month of the day of his nomination before two witnesses be produced at the time of his nomination.

3. *Mayor to appoint officers for taking the poll.*] At any municipal election of councillors, auditors, or assessors, the power and duty of the mayor, under section twenty of the Ballot Act of 1872, to provide everything which in the case of a parliamentary election is required to be provided by the returning officer for the purpose of a poll, shall (save as to the appointment of the alderman as returning officer for any ward) extend to the appointment of officers for taking the poll and counting the votes recorded at such election.

4. *Amendment of law.*] The provisions contained in rules 16 and 19 of the first schedule to the Ballot Act, 1872, shall not apply to any such election, but the mayor shall furnish every polling station with such number of compartments in which the voters can mark their votes screened from observation, and furnish each presiding officer with such number of ballot papers, as in the judgment of the mayor shall be necessary for effectually taking the poll at such election in other respects in the manner provided by the Ballot Act, 1872. Where more candidates are nominated than there are vacancies to be supplied, the mayor shall at least four days before the day of election, give such public notice as may be required by law of the situation, division, and allotment of polling places for taking the poll at any municipal election, and of the description of persons entitled to vote thereat and at the several polling stations.

5. *Conclusiveness of burgess roll.*] At any municipal election a person shall not be entitled to sign or subscribe any nomination paper, or to vote, unless his name is on the burgess roll for the time being in force in the borough, or on the ward list for the time being in force for the ward, for which such election shall be held; and every person whose name is on such burgess roll or ward list, as the case may be, shall be entitled to sign or subscribe any nomination paper, and to demand and receive a ballot paper, and to vote; provided that nothing in this section shall entitle any person to do any of the acts aforesaid who is prohibited from doing such acts or any of them by law, or relieve such person from any penalties to which he may be liable for doing any such act.

6. *One poll to be taken for auditors and assessors.*] At the poll at any election of auditors and assessors one ballot paper only shall be used by any person voting. In such ballot paper the names of the candidates for the respective offices shall be separate, and distinguished so as to show the office for which they are respectively candidates, and the ballot paper shall be in the form No. 3, set forth in the first schedule to this Act or to the like effect, and the provisions of the Ballot Act, 1872, shall at any such election be altered and varied accordingly: provided always, that in counting the votes every such ballot paper shall be deemed to be a separate ballot paper in respect of each office, and any objections thereto shall be considered and dealt with accordingly.

7. *Withdrawal of candidates.*] Where more candidates are nominated at any municipal election than there are vacancies to be filled at such election, any of such candidates may withdraw from his candidature by notice signed by him and delivered to the town clerk not later than two o'clock in the afternoon of the day next after the last day for the delivery of nomination papers to the town clerk; provided that such notices shall take effect in the order in which they are delivered to the town clerk, and that no such notice shall have effect so as to reduce the number of candidates ultimately standing nominated below the number of the vacancies to be filled.

8. *Notices by mayor or town clerk may comprise the several wards of borough.*] Any notice required by law to be given or published by the mayor or other returning officer or town clerk in connexion with any municipal election may, as to auditors and assessors, be comprised in one notice, and with respect to the election of councillors in any borough divided into wards, may comprise the matter necessary to such notice for the several wards in the borough, and it shall not be necessary to issue a separate notice for each ward.

9. *Time of holding election on extraordinary vacancies.*] Section eleven of the Act sixteenth and seventeenth Victoria, chapter seventy-nine, shall be read as if fourteen days were therein inserted instead of ten days, and the day for holding the election in the case of any extraordinary vacancy in the office of councillor, auditor, or assessor in any borough (whether such borough shall be divided into wards or not) shall be fixed by the mayor.

10. *Power to town council to divide wards into polling places as they may think fit.*] The town council of any borough may by order divide any such borough or any ward or wards of such borough into polling districts in such manner as they may think most convenient for taking the votes of the

burgesses at a poll, and the overseers shall, so far as practicable, make out the lists of burgesses in such manner as to divide the names in conformity with such polling districts.

11. *Computation of time under the Act.*] In reckoning time for the purpose of this Act, Sunday, Christmas Day, Good Friday, and any day set apart for a public holiday, fast, or public thanksgiving, shall be excluded.

12. *Repeal of parts of Acts in Second Schedule.*] The several Acts of parliament mentioned in the second schedule to this Act shall be repealed to the extent specified in the third column of such schedule, but such repeal shall not affect the validity or invalidity of anything already done or suffered, or any remedy or proceeding in respect thereof, or the proof of any past act or thing.

13. *Act to be construed with Municipal Corporation Acts.*] This Act shall, as far as consistent with the tenor thereof, be construed as one with the Act fifth and sixth William the Fourth, chapter seventy-six, and the Acts amending the same, and the Acts for the time being in force relating to elections of councillors, auditors, and assessors in boroughs.

14. *Short title.*] This Act may for all purposes be cited as "The Municipal Elections Act, 1875."

15. *Duration of Act.*] This Act shall continue in force for so long only as the Ballot Act, 1872, continues in force.

## FIRST SCHEDULE.

### FORM NO. 1.

#### *Notice.*

Borough of ——. Election of [Councillors, or Auditors, or Assessors, *as the case may be*] for the [— Ward or several Wards of the] Borough.

#### *Take Notice,*

1. That an election of [*here insert the number of Councillors, Auditors, or Assessors, as the case may be*] for the [— Ward or several Wards of the] said Borough will be held on the — day of —.

2. Candidates must be nominated by writing, subscribed by two enrolled burgesses as proposer or seconder, and by eight other enrolled burgesses as assenting to the nomination.

3. Candidates must be duly qualified for the office to which they are nominated, and the nomination paper must state the surname and other names of the person nominated, with his place of abode and description, and may be in the following form, or to the like effect:

(Set out Form No. 2.)

4. Each candidate must be nominated by a separate nomination paper, but the same burgesses or any of them may subscribe as many nomination papers as there are vacancies to be filled for the borough [or ward], but no more.

5. Every person who forges a nomination paper, or delivers any nomination paper knowing the same to be forged, will be guilty of misdemeanor, and be liable to imprisonment for any term not exceeding six months, with or without hard labour.

6. Nomination papers must be delivered by the candidate himself, or his proposer or seconder, to the town clerk at his office before five o'clock in the afternoon of — day the — day of — next.

7. The mayor will attend at the town hall on — day the — day of —, from two to four o'clock in the afternoon, to hear and decide objections to nomination papers.

8. Forms of nomination papers may be obtained at the town clerk's office; and the town clerk will, at the request of any enrolled burgess, fill up a nomination paper.

Dated this — day of — 18—.

A. B., Town Clerk.

#### FORM NO. 2.

##### *Nomination Paper.*

Borough of —. Election of Councillors, Auditors, or Assessors for — Ward in the said Borough [or the said Borough], to be held on the — day of — 18—.

We, the undersigned, being respectively enrolled burgesses, hereby nominate the following person as a candidate at the said election.

Surname.	Other Names.	Abode.	Description.

(Signed)

A.B. of\*

C.D. of\*

We, the undersigned, being respectively enrolled burgesses, do hereby assent to the nomination of the above person as a candidate at the said election.

Dated this — day of — 18—.

(Signed)

E.F. of\*

G.H. of\*

I.J. of\*

K.L. of\*

M.N. of\*

O.P. of\*

Q.R. of\*

S.T. of\*

\* The number on the Burgess Roll of the Burgess subscribing, with the situation of the property in respect of which he is enrolled on the Burgess Roll.

## FORM NO. 3.—BALLOT PAPER.

*Form of Front of Ballot Paper.*

For Auditors.

Counterfoil. No.  NOTE; <i>The counterfoil is to have a number to correspond with that on the back of the Ballot Paper.</i>	1	<b>CADE.</b> (John Cade, of 22, Welclose Place, Accountant.)	
	2	<b>JOHNSON.</b> (Charles Johnson, of 7, Albion Street, Gentleman.)	
	3	<b>THOMPSON.</b> (William Thompson, of 14, Queen Street, Silversmith.)	

For Revising Assessor.

1	<b>BACON.</b> (Charles Bacon, of 29, New Street, Solicitor.)	
2	<b>BYRON.</b> (James Byron, of 45, George Street, Commission Agent.)	
3	<b>WILSON.</b> (George Wilson, of 22, Hanover Square, Gentleman.)	

*Form of Back of Ballot Paper.*

No. —. Election of Auditors [*or Assessors*] for the borough of — to be held on the — day of — 18—.

The number on the back of the ballot paper is to correspond with that on the counterfoil.

## SECOND SCHEDULE.

Session and Chapter.	Title of Act.	Extent of Repeal.
5 & 6 Will. 4, c. 76.	An Act to provide for the regulation of Municipal Corporations in England and Wales.	So much of section 47 as relates to the fixing of the day of election by the alderman.
22 Vict. c. 35.	The Municipal Corporation Act, 1859.	Sections 5, 6, 7, and Schedules.
32 & 33 Vict. c. 55.	An Act to shorten the term of residence required as a qualification for the Municipal Franchise, and to make provision for other purposes.	Sections 6 and 7.
35 & 36 Vict. c. 33.	The Ballot Act, 1872.	Directions in the Schedule to the Act as to the form of nomination papers at Municipal Elections.

The provisions of the statutes relating to the promotion of the public health may be referred to; also those relating to the removal of nuisances (*a.*)

(*a*) See "Lumley's Sanitary Laws," third edition, Shaw and Sons, London (1872).





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